

APPEARANCES: (CONTINUED)

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BY: SUSAN Q. HAINES, ESQ.

Also Present: JOSEPH ALM, ESQ.
- Tesla, Inc.

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VALERIE CAPERS WORKMAN
- Tesla, Inc.

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Thursday - September 30, 2021

8:01 a.m.

P R O C E E D I N G S

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(Proceedings were heard out of presence of the jury:)

THE CLERK: Please come to order.

THE COURT: Please be seated.

I understand that there are problems on the bridge and not only is it impacting Mr. Organ, but also at least one of the jurors. So it will resolve when it resolves.

So there were just a couple of things -- two things on my mind this morning.

One is I will give the proposed instruction on the persons most knowledgeable as it was written last night and what was just proposed and previously proposed and I said I was going to read it.

And then the other issue was Mr. Organ yesterday was about to read some discovery. Do we know what that is? And --

MR. ALEXANDER: Yes, Your Honor. I believe that we submitted that documentation to you last night. My understanding is that it was going to be submitted so that everyone would know what was going to be read.

THE COURT: Okay. I didn't see it this morning.

Ms. Kennedy, do you know what it is?

MS. KENNEDY: I do not, Your Honor.

MR. ALEXANDER: We should be able to provide printed

1 copies of that.

2 **THE COURT:** Okay. That would be great. Why don't you
3 provide it to Ms. Kennedy so she knows what it is that you're
4 talking about. And if there's no problem, then we can proceed;
5 and if there's a problem, I'd like to know about it.

6 (Whereupon document was tendered to the Court and
7 counsel.)

8 (Brief pause.)

9 **THE COURT:** Mr. Alexander, while we're waiting, who
10 are the witnesses today?

11 **MR. ALEXANDER:** As I understand it, the witnesses are
12 we're going to complete Mr. Diaz. Then we'll have La'Drea
13 Diaz. Then we'll have Dr. Anthony Reading. Then we'll have
14 Amy Oppenheimer.

15 **THE COURT:** And will that complete your case?

16 **MR. ALEXANDER:** No. I believe that we have -- I
17 believe that we have Lamar Patterson and the Erin Marconi
18 video. And with regard to Mr. Patterson, it's unclear where he
19 will be in the lineup.

20 **THE COURT:** Okay.

21 **MR. ALEXANDER:** And then there's the Heisen transcript
22 as well?

23 **THE COURT:** The Heisen?

24 **MR. ALEXANDER:** Yes.

25 **THE COURT:** Okay. All right.

1 Are you ready to discuss the discovery yet?

2 **MS. KENNEDY:** Not yet. We're reviewing the request
3 just to be sure. I think some of them should be okay. We're
4 just verifying there is not a supplemental response.

5 Your Honor, when we get done with this, we do have some
6 issues with the experts, Amy Oppenheimer, Charles Mahla, and
7 Anthony Reading. We received this morning at about 6:15 a
8 PowerPoint which appears to be some additional information from
9 Dr. Reading in his testimony. I need to review it.

10 Last night we received for Charles Mahla a demonstrative
11 requesting basically to talk about matters outside of his
12 expert report in 2019 in violation of the Pretrial Conference
13 Order, Docket 78, Page 7, Paragraph 7(c).

14 The same with Amy Oppenheimer. We received a multi-page
15 PowerPoint late last night that, again, appears to have
16 information outside the report. And, more importantly, it's
17 talking about and it has in the PowerPoint evidence that's been
18 precluded by this Court; namely, Exhibit 109, the May 21st,
19 2016, email and the photo of the graffiti.

20 Also Exhibit 107, which is involving April 2016 issues,
21 which is after Mr. Diaz was no longer working at the Tesla
22 facility.

23 And also Exhibit 108, by way of example.

24 I'll be frank, we got these late last night. I haven't
25 really -- I haven't had a chance to study all the PowerPoints,

1 but those were the ones that jumped out at me. I'll look at
2 them today, but I think I have seven witnesses today,
3 Your Honor, so there may be other issues.

4 Also, we're going to have to call a witness probably on
5 Friday, Mr. Chris Reilly. He wasn't on the Witness List. He's
6 got to come here to authenticate Exhibit 379, the Taleo
7 dashboard recruiting document for Demetric Di-az. This Court
8 said that we could use that exhibit if Demetric Di-az's
9 testimony was coming in, which it came in yesterday, and we
10 were able to get a stipulation.

11 Mr. Reilly is the Director of Recruiting and Work Force
12 Development. He's just going to authenticate it as a business
13 record. He's in Nevada. If we can have him by Zoom, it will
14 probably take two minutes or less to lay the foundation that
15 it's a business record at the time so that it can be used.

16 **THE COURT:** All right.

17 **MS. KENNEDY:** We can probably do that on Friday,
18 Your Honor.

19 **THE COURT:** That's fine.

20 And with respect to the experts, this is federal court and
21 you are bound by the expert reports. Their testimony is bound
22 by their reports.

23 And you're also not able to bring in through an expert
24 what I've precluded in the Motions in Limine. So to the extent
25 that Ms. Kennedy was accurate in her description, you better be

1 sure that your PowerPoints don't include information that's
2 excluded from -- or that's new.

3 **MR. ALEXANDER:** With regard to Amy Oppenheimer, we'll
4 be able to address that. I have not seen that PowerPoint, so
5 I'll attempt to address that issue.

6 With regard to the other expert, Mr. Mahla, he's an
7 economist and he gave testimony based on the value of the
8 company at that time. The only thing that has changed is the
9 value of the company.

10 And so, in other words, his report is exactly the same.
11 What he's done is updated it to say: This is what the current
12 value of the company -- of Tesla is.

13 As I understand it, because there has been a delay in the
14 trial time, a delay in his deposition testimony, should not
15 prevent him from being able to testify to the value of the
16 company. All of his other opinions remain the same, but with
17 regard to valuing the company and its current position as of
18 the date of the trial, I believe he should be able to update
19 his information in that regard.

20 **THE COURT:** All right. Ms. Kennedy, what do you say?

21 **MS. KENNEDY:** I would object to that under Federal
22 Rule of Civil Procedure 26 and 37.

23 And his report was back in 2019. If they were going to
24 update his opinion, update his report, we had two years. He
25 could have sought leave. He could have allowed me to at least

1 take a 20-minute deposition for what his recent opinion is. As
2 of right now, I basically got ambushed last night at about 9:00
3 o'clock with 126 pages of documents.

4 **THE COURT:** I could not agree more, if you were going
5 to supplement his report. I do think that that would be a good
6 reason to allow that testimony, but to provide it the night
7 before his testimony I think is unfair and prejudicial.

8 So I am inclined -- I'm happy to look at, you know, the
9 documentation to get a clearer picture of everything, but I
10 would exclude that.

11 **MR. ALEXANDER:** All right. Your Honor, we would like
12 to be able to just provide you with that. It's all of two
13 pages. And they know the value of their company. It is not as
14 though it's a surprise.

15 And the information --

16 **THE COURT:** But you knew -- Mr. Alexander, this is --
17 we're in the middle of a trial. There are seven witnesses
18 coming today. Your failure to provide that prior to the
19 beginning of the trial I think is -- it's just -- it's
20 improper.

21 But I will look at what you've got, and I'll make a final
22 ruling then if you would like me to look at it.

23 **MR. ALEXANDER:** Thank you, Your Honor.

24 **MS. JENG:** Your Honor, we have a couple of objections
25 to the designated discovery responses.

1 **THE COURT:** Okay.

2 **MS. JENG:** No. 8, this is just cumulative. Mr. Romero
3 already testified about his position at Tesla and being a
4 former employee. We don't think that that evidence should be
5 read again in discovery.

6 **THE COURT:** Okay. I'm going to overrule that because
7 I think the issue is the potential issue of bias on his
8 representation. But I would strike the last sentence. So the
9 first sentence could be read and not the second.

10 **MR. ALEXANDER:** I'm sorry, Your Honor. Could you
11 identify that again, please?

12 (Mr. Organ enters the courtroom.)

13 **MR. ALEXANDER:** Yeah. So in the Interrogatory No. 8
14 regarding Mr. Romero, you can read the first sentence and not
15 the second.

16 What else, Ms. Jeng?

17 **MS. JENG:** Request For Admission No. 5. This covers,
18 again, a period of time that's outside of the relevant time
19 period. It's prejudicial under 403. We don't think that
20 should come in.

21 **THE COURT:** I agree. So I will exclude Admission
22 No. 5 as being outside the scope.

23 **MS. JENG:** With respect to Request For Admission
24 No. 2, we think the second sentence should be stricken given
25 that it states "our understanding."

1 **THE COURT:** I'm not sure why that would be the case.

2 **MS. JENG:** Well, in this -- this is -- plaintiff has
3 the burden to prove that, and there's no foundation that there
4 is actually a contract.

5 **THE COURT:** Well, you can argue that to the jury, but
6 it was your understanding and you put it in the Request For
7 Admissions, so...

8 **MS. JENG:** Understood.

9 For, I think -- sorry. The last initial discovery
10 information pursuant to General Order No. 71 response, we
11 object to altering the request or the response in any way.

12 **THE COURT:** I'm sorry. What?

13 **MS. JENG:** At the very last page.

14 **THE COURT:** The last page?

15 And that objection is overruled. It is -- I think
16 Demetric Di-az is no longer in this case, and I think it's
17 appropriate to delete plaintiffs.

18 All right. So --

19 **MR. ALEXANDER:** And so -- I'm sorry.

20 And so what is the Court's order with regard to changing
21 the --

22 **THE COURT:** The last -- what is this? I don't know
23 even what this -- what the discovery was, but the one that
24 appears on Page 4, No. 1, the request regarding Demetric Di-az
25 and Owen Diaz as supervisors, can be read as stated by the

1 plaintiffs.

2 **MR. ALEXANDER:** Thank you, Your Honor.

3 **MR. ORGAN:** Thank you, Your Honor.

4 **THE COURT:** Are you going to do that at some point
5 today?

6 **MR. ALEXANDER:** Yes, Your Honor.

7 **MR. ORGAN:** Assuming we have time. Assuming we have
8 time.

9 So just so I'm absolutely certain, because I don't want to
10 read something incorrectly -- and I did run in, I apologize to
11 the Court, because of the bridge protest -- so on No. 8 we
12 can't read the second sentence; is that correct?

13 **THE COURT:** Correct.

14 **MR. ORGAN:** Okay. And then on number -- we can't read
15 No. 5 --

16 **THE COURT:** Correct.

17 **MR. ORGAN:** -- of the Request For Admissions?

18 **THE COURT:** Correct.

19 **MR. ORGAN:** And those are the only two changes; is
20 that correct, Your Honor?

21 **THE COURT:** Yes, unless are there any other objections
22 that the defendant had.

23 **MR. ORGAN:** Okay. Thank you, Your Honor.

24 **THE COURT:** All right.

25 **MR. ORGAN:** Did you already discuss the

1 demonstratives?

2 **THE COURT:** The expert demonstratives?

3 **MR. ORGAN:** Yes.

4 **THE COURT:** Yes.

5 **MR. ORGAN:** Okay.

6 **THE COURT:** You can talk to Mr. Alexander about that.

7 **MR. ORGAN:** Okay.

8 **THE COURT:** All right. Is there any other matter that
9 needs to be addressed?

10 **MS. KENNEDY:** From the defense, no more, Your Honor.

11 **THE COURT:** Okay. Mr. Alexander, anything else?

12 **MR. ALEXANDER:** Not at this time, Your Honor.

13 **THE COURT:** Okay.

14 **MR. ORGAN:** One other thing, Your Honor. I did call
15 my client this morning to let him know that I was running late.
16 So I know the Court has said we are not to contact --

17 **THE COURT:** I said on any substantive ground.

18 **MR. ORGAN:** Yeah. I just wanted to clarify to the
19 Court that no substantive discussion, but I did tell him that I
20 was caught in the bridge traffic.

21 **THE COURT:** That doesn't sound substantive, so you're
22 fine. Thank you.

23 All right. I will see you when we have a jury.

24 **MS. KENNEDY:** Thank you, Your Honor.

25 (Whereupon there was a recess in the proceedings)

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1 from 8:24 a.m. until 8:31 a.m.)

2 (Proceedings were heard in the presence of the jury.)

3 **THE COURT:** All right. Please be seated, everybody.

4 Good morning, ladies and gentlemen. I understand that
5 particular appreciation is due to those of you who were trying
6 to get across the Golden Gate Bridge this morning. So thank
7 you all for being here so promptly.

8 We were still in the cross-examination of Mr. Diaz and so,
9 Ms. Kennedy, please proceed.

10 **MS. KENNEDY:** Thank you, Your Honor.

11 **OWEN ORAPIO DIAZ,**

12 called as a witness for the Plaintiff, having been previously
13 duly sworn, testified further as follows:

14 **CROSS-EXAMINATION RESUMED**

15 **BY MS. KENNEDY**

16 **Q.** Good morning. Good morning, Mr. Diaz.

17 **A.** Good morning, ma'am. I hope you slept well.

18 **Q.** Take a look at the black notebook.

19 **A.** Yes, ma'am.

20 **Q.** If you go to Exhibit 204, which has only been marked for
21 identification.

22 **MS. KENNEDY:** And, Your Honor, it has been redacted.

23 (Trial Exhibit 204 marked for identification)

24 **THE WITNESS:** I have it, ma'am.

1 **BY MS. KENNEDY:**

2 **Q.** Okay. Do you recall this as your handwritten application
3 to CitiStaff signed on June 2nd, 2015?

4 **A.** Yes.

5 **Q.** And if you go to the second page, do you recognize your
6 signature on Page 2?

7 **A.** Yes.

8 **Q.** And is this the handwritten application you submitted to
9 someone at CitiStaff sometime in the early part of June 2015?

10 **A.** Yes. After I was directed from Indeed, yes, I did go to
11 CitiStaff and fix this.

12 **Q.** And is all the handwritten information on Exhibit 204 in
13 your handwriting?

14 **A.** Yes.

15 **MS. KENNEDY:** Your Honor, I move to admit Exhibit 204.

16 **THE COURT:** Any objection?

17 **MR. ORGAN:** No objection, Your Honor.

18 **THE COURT:** All right. It's admitted.

19 (Trial Exhibit 204 received in evidence)

20 **BY MS. KENNEDY**

21 **Q.** So take a look at Exhibit 204, Mr. Diaz. Do you recall
22 who you provided this application, the CitiStaff Solutions
23 application to?

24 (Document displayed.)

25 **A.** I don't remember her name, but it was a heavy-set Latino

1 female at the Newark office.

2 Q. Do you recall anything about her?

3 A. No, ma'am.

4 Q. And was this the CitiStaff Solutions office in Newark,
5 Newark, California?

6 A. Yes, ma'am. It was in Newark.

7 Q. And did you have any discussion with anyone at CitiStaff
8 about this application?

9 A. No, ma'am. When I was filling out the application, the
10 Latino female, as I was filling out the application, she picked
11 up the phone. She was talking on the phone.

12 I filled it out. I handed it to her, and then she had
13 told me at that point: Hey, I need you to head over to Tesla
14 the next day.

15 Q. Now, did you ever receive any type of letter from Tesla
16 offering you employment with Tesla directly?

17 A. No, ma'am.

18 Q. So you understood at the time you filled out the
19 CitiStaff Solutions application on June 2nd, 2015, that you
20 were going to be assigned to work at the Tesla factory if, in
21 fact, CitiStaff hired you; correct?

22 A. That was never discussed, ma'am.

23 Q. So that was never discussed with anyone at CitiStaff?

24 A. Umm, you said that I had to understand that I was being
25 assigned at CitiStaff -- I mean, at Tesla. She never said I

1 was going to be assigned at Tesla. What she said was, is: Can
2 you head over to Tesla tomorrow?

3 Q. And when she said "Head over to Tesla tomorrow," what did
4 you think?

5 A. That I got the job.

6 Q. And you were going to be assigned at Tesla; correct?

7 A. Again, ma'am, she never stated that I was going to be
8 assigned at Tesla. She told me can I head over to Tesla
9 tomorrow.

10 Q. Oh, I understand that. My question is: When she said "Go
11 over to Tesla," you just filled out a CitiStaff Solutions
12 application. You knew you were being assigned to Tesla through
13 CitiStaff; correct?

14 A. That wasn't my understanding at the time, ma'am, no.

15 Q. What was your understanding?

16 A. My understanding was I just got the job.

17 Q. What job?

18 A. The job at Tesla.

19 Q. Doing what?

20 A. She had sent me over there at original to be a part of the
21 sustainability group.

22 Q. Is that what she told you?

23 A. No. She never said that either.

24 Q. So how did you get that understanding?

25 A. Because when I got over there, that's where they put me,

1 in the sustainability group.

2 Q. And who is "they"?

3 A. Umm --

4 MS. KENNEDY: Oh, I'm sorry, Your Honor. I don't
5 think the TV in the back is working for the jurors.

6 THE COURT: Okay.

7 MS. KENNEDY: Oh, there it is.

8 THE COURT: Let us know when you -- is it up there?
9 There it goes.

10 MS. KENNEDY: Okay. Now I forgot where I was.

11 BY MS. KENNEDY

12 Q. So at the time that you filled out this application and
13 you were sent over to the Tesla factory, you didn't have any
14 idea where you were going to be assigned; is that correct?

15 A. No, ma'am.

16 Q. So when you got over there, someone sent you over to the
17 sustainability area or department; correct?

18 A. When I got to Tesla, after I finished my orientation
19 class, Jaime Salazar put me on the back of a golf cart and at
20 that point he drove me to the elevator ramp.

21 Q. Mr. Diaz, did you ask anybody at Tesla: Where am I going?
22 What job am I hired for? What's going on? Any questions like
23 that?

24 MR. ORGAN: Objection. Compound, Your Honor.

25 MS. KENNEDY: I'll rephrase it, Your Honor.

1 **THE COURT:** Sustained.

2 **BY MS. KENNEDY**

3 **Q.** At the time that you got over to Tesla for your
4 orientation, did you ask anybody, like: What job am I going to
5 get? Did you ask that question?

6 **A.** No, I did not, ma'am. I was just so happy to be there, I
7 didn't ask them questions. I'm sorry.

8 **Q.** Did you ask what type of -- did they ask you what type of
9 job you wanted?

10 **A.** When I had initially filled out the -- both applications,
11 yes, they did ask me what kind of work that I was looking for.
12 I said warehouse, production work, things like that.

13 Yes. So, yes, I did ask the kind of job that I wanted.

14 **Q.** When you were on the cart with Jaime Salazar, did you ask
15 him any question like: Hey, what am I being hired for?

16 **A.** No, ma'am. Because at that point when Mr. Salazar had put
17 me on the golf cart, before that he had stated to me: You're a
18 man that dresses for the job. And he had gave me another
19 position. I was just so happy I got promoted. So, hey, I
20 didn't ask any questions. I just followed.

21 **Q.** Okay. So you're happy you got some type of job. You
22 didn't ask any questions, and you're ready to go start working
23 at your assignment at Tesla in early June 2015?

24 **MR. ORGAN:** Objection. Compound. Asked and answered.

25 **THE COURT:** Sustained.

1 **BY MS. KENNEDY**

2 **Q.** Once you started working at Tesla, you were assigned to
3 work at the elevators; correct?

4 **A.** Yes, ma'am.

5 **Q.** All right. Let's go to Exhibit 265, which has been marked
6 for identification yesterday.

7 **MR. ORGAN:** 265?

8 **MS. KENNEDY:** 265.

9 **MR. ORGAN:** 265.

10 **BY MS. KENNEDY:**

11 **Q.** And, sir, it should be in your black book as well.

12 **A.** Yes, ma'am. I see it here.

13 **Q.** And we talked about this yesterday, but I want to confirm
14 that this is an email that was forwarded to you from Lamar
15 Patterson on December 15th, 2015; correct?

16 **A.** Yes. Mr. Patterson did forward me his resume. Yes, he
17 did.

18 **Q.** And at the top of Exhibit 275 -- I'm sorry, 265, the
19 December 15th, 2015 email, that's to your email address;
20 correct, Mr. Diaz?

21 **A.** Yes. That's my name and my last -- my last JR, my birth
22 date with a 68 at gmail.com, yes, ma'am.

23 **MS. KENNEDY:** And, Your Honor, I would move to admit
24 Exhibit 265.

25 **MR. ORGAN:** No objection, Your Honor.

1 **THE COURT:** It's admitted.

2 (Trial Exhibit 265 received in evidence)

3 **BY MS. KENNEDY**

4 **Q.** All right. So take a look at this. So just to reorient,
5 Lamar Patterson was someone who was referred to you by another
6 Tesla employee or contractor? How did you get to know
7 Mr. Patterson?

8 **A.** I didn't know Mr. Patterson at the time. As I stated
9 yesterday, that another employee walked up to me and asked me
10 was there any positions over in the elevator. And I explained
11 to him, yes, because at that time I was short staffed. I was
12 working elevators by myself.

13 So as soon as he said that, I told him yes. He asked me
14 could a person forward his email to me and could I forward it
15 up to somebody else, and I did just that.

16 **Q.** And was it your understanding that this person was Lamar
17 Patterson's cousin?

18 **A.** Yes, ma'am.

19 **Q.** And Lamar Patterson's cousin worked with you at the Tesla
20 factory; correct?

21 **A.** Yes. He worked at the Tesla factory, but he did not work
22 with me directly, no.

23 **Q.** And so you heard that someone was looking for a position
24 that you find out later is Lamar Patterson, and then you just
25 forwarded his resume to someone?

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1 **A.** Yes, I forwarded his resume to Edward Romero.

2 **Q.** And that's what's reflected here on Exhibit 265; correct?

3 I'm sorry. The resume sent by Lamar Patterson to you.

4 (Interruption in the proceedings due to technical
5 difficulties.)

6 **THE COURT:** All right. Go ahead, Ms. Kennedy.

7 **MS. KENNEDY:** Thank you, Your Honor.

8 **BY MS. KENNEDY**

9 **Q.** Mr. Diaz, I'll have you look at Exhibit 245, which I'm not
10 sure it's in your black notebook, but it was admitted
11 yesterday. It could be in your white notebook, sir.

12 Do you have that exhibit in front of you, sir?

13 **A.** Yes, ma'am.

14 **Q.** And if you go to Exhibit 245 at Page 2, it's already been
15 admitted.

16 And take a look at Exhibit 245 at Page 2.

17 **MS. KENNEDY:** Oh, Your Honor, it's not working? I'm
18 sorry.

19 **THE COURT:** Let's try and get that up again.

20 **MS. KENNEDY:** Okay.

21 (Document displayed.)

22 **BY MS. KENNEDY**

23 **Q.** All right. Mr. Diaz, do you have Exhibit 245 at Page 2,
24 which is the Lamar Patterson email to you on February 26, 2016?

25 **A.** Yes, I have it, ma'am.

1 Q. And this is an email Mr. Patterson wrote to you regarding
2 the incident that you had with Robert Hurtado; is that correct?

3 A. Yes, ma'am. You can see where he's saying that Robert
4 Hurtado was hostile.

5 Q. Yes. And my understanding is this is an incident you
6 claimed that Robert Hurtado became very aggressive with you and
7 used the "N" word with you; correct?

8 A. This is the incident where me and Mr. Hurtado and Lamar
9 Patterson was in the elevator and me and Mr. Patterson was
10 talking. He kept trying to interject after everything had been
11 going on, he had been harassing me. And I had told him can he
12 just stop talking to me.

13 So Mr. Patterson is saying that I asked him could he write
14 a little something witnessing what he had saw, and that's what
15 he did.

16 Q. My question was: Was this the incident with Mr. Hurtado
17 where you claimed Mr. Hurtado called you the "N" word? "Yes"
18 or "no."

19 A. It was so many incidents, I just can't remember at this
20 particular time. Sorry.

21 Q. Well, the incident that you referred to, we just talked
22 about, Lamar Patterson was a witness; correct?

23 A. Yes, he was.

24 Q. And at the time that this incident occurred, you were
25 supervising Lamar Patterson; correct?

1 A. Yes, I was.

2 Q. And regarding this Robert Hurtado elevator incident, you
3 asked Mr. Patterson to write down what he saw; correct?

4 A. Yes.

5 Q. And you told him to be truthful; correct?

6 A. Yes, ma'am.

7 Q. And you told him to be accurate; correct?

8 A. I did not say be accurate, no. Them words never came out
9 of my mouth, ma'am.

10 Q. Well, told him to be truthful about what he said; correct?

11 A. Umm, I'm trying to play back the conversation in my mind
12 right now. If you can give me a second to try to put myself
13 back into the elevator with him.

14 Q. Absolutely. Take your time, and let me know when you're
15 ready.

16 (Brief pause.)

17 A. I just asked him to -- could he write down what he had
18 witnessed. That's all. I didn't ask him to be accurate. I
19 didn't ask him to tell the truth. I didn't -- that never came
20 up. I just asked him could he just write it down, what his
21 versions of the events was.

22 Q. Did you ask Mr. Patterson to omit anything?

23 A. Again, I just asked Mr. Patterson to write down. I didn't
24 have nothing to do with Mr. Patterson writing the email. I
25 didn't put any words in Mr. Patterson's mouth. I didn't -- I

1 just asked him to document it. That was it.

2 **Q.** And on February 26, 2016, did you have a run-in or an
3 argument with Robert Hurtado where Lamar Patterson was a
4 witness where Robert Hurtado called you the "N" word? "Yes" or
5 "no."

6 **A.** At this moment I'm trying to play everything back in my
7 head. I can remember an incident in the elevator with him. I
8 can remember Mr. Hurtado getting upset.

9 I probably did. I'm will not say probably, but I'm going
10 to say most likely he did call me the "N" word. Because at
11 that point, you know, I just didn't want him talking to me
12 anymore. So I'm more focused on: Hey, hey, listen here. If
13 it doesn't have anything to do with this job, please don't talk
14 to me.

15 **Q.** When you got this email from Lamar Patterson on
16 February 26, 2016, did you read it?

17 **A.** No. I just forwarded it up.

18 **Q.** So you didn't make sure that Mr. Patterson -- after you
19 asked him to write a statement about this, you didn't make sure
20 it was accurate and contained these horrible sort of racial
21 slurs you claim occurred?

22 **MR. ORGAN:** Objection. Argumentative, Your Honor.

23 **THE COURT:** Sustained.

24 **BY MS. KENNEDY**

25 **Q.** When you got the email from Mr. Patterson, did you take

1 any time, whether at the moment you got it or two or three days
2 afterwards, to read it?

3 **MR. ORGAN:** Objection. Asked and answered.

4 **THE COURT:** Overruled. You can answer.

5 **THE WITNESS:** I just asked Mr. Patterson to document
6 it, ma'am. That was it.

7 **BY MS. KENNEDY**

8 **Q.** Mr. Diaz, as of about March of 2016, you had already
9 decided that you were not going to be returning back to work at
10 the Tesla facility; is that correct?

11 **A.** Yes, ma'am.

12 **Q.** And, say, in the February and March 2016 time period, you
13 had some conversations with Joyce DelaGrande about concerns she
14 had from her team about the elevator service; correct?

15 **MR. ORGAN:** I'm sorry, Your Honor. I missed the date.

16 **MS. KENNEDY:** I'll rephrase, counsel. I'll rephrase.

17 **BY MS. KENNEDY**

18 **Q.** In February and March of 2016, did you have any
19 conversations with Joyce DelaGrande about concerns she had with
20 her team and the elevator service?

21 **A.** I don't remember the exact date, ma'am, but, yes, I did
22 have a conversation with Joyce DelaGrande. The conversation
23 that I had with Joyce DelaGrande was -- I believe it was behind
24 the incident.

25 My harasser, Mr. Hurtado, had went back over to -- and

1 told his boss something, but I had went over there, and I tried
2 to talk to her and told her that Robert had been threatening me
3 and some of the things that he had been saying to me. That was
4 about it.

5 **Q.** Do you have any recollection of any conversations with
6 Joyce DelaGrande about concerns her team had with the service
7 that the elevator folks, the people you were supervising, were
8 providing to the material folks?

9 **A.** She asked me about the service, and I had told her that I
10 was still keeping up the same service like when she asked me
11 when she was going to get fired, could I go help her clean up
12 the drop zone.

13 So, you know, like I said, I was giving out the same
14 output of service from day one to day zero. Just because I --
15 I might be in a bad mood or whatever-have-you and the things
16 that's going on in the factory is affecting me, but I shouldn't
17 let that affect my work output.

18 **Q.** And you considered in your opinion to do the best job
19 possible despite everything; right?

20 **A.** Under the circumstances, yes, ma'am.

21 **Q.** In this particular case you are seeking damages for your
22 emotional upset for the things that you claim happened to you
23 at the Tesla facility or factory; is that correct?

24 **A.** Yes, ma'am.

25 **Q.** And part of that emotional distress you're seeking in this

1 case is about how you were affected because your son Demetric
2 was working at the factory with you and how that affected you;
3 correct?

4 **A.** Yes, ma'am.

5 **Q.** And you testified that watching your son made you very
6 upset. Would that be an understatement?

7 **A.** That's pretty much an understatement, yes.

8 **Q.** And you said that your son got involved in some activities
9 that made you very unhappy; correct?

10 **A.** Umm, his supervisor was calling him the "N" word. Yes,
11 that made me unhappy.

12 **Q.** And this was at a time when you and Mr. -- strike that,
13 you and your son Demetric Di-az were both working at the Tesla
14 factory; correct?

15 **A.** It happened while me and my son was working at the factory
16 together, yes, you're right, ma'am.

17 **Q.** And when you heard from your son about these words being
18 said to him, these racist words being said to him, did you
19 document any of that to anyone at the Tesla facility or to
20 CitiStaff or to West Valley?

21 **A.** No, I did not, ma'am.

22 **Q.** And you understood that in the summer of 2015 your
23 stepdaughter La'Drea Jones also applied for a job at Tesla;
24 correct?

25 **A.** I didn't know that, ma'am.

1 Q. So in the summer of 2015 when you're living with La'Drea
2 Jones, your wife and your son Demetric Di-az, you had no idea
3 she applied for a job in the summer of 2015; correct?

4 A. I had no idea.

5 Q. Now, I understand that your son Demetric Di-az has pleaded
6 guilty to three counts of robbery of a Domino's Pizza store; is
7 that correct?

8 A. Yes, ma'am.

9 Q. And you would agree those are serious felonies; correct?

10 A. Yes. He was going through mental trauma. Yes, I do
11 believe those are serious felonies.

12 Q. And these three counts of robbery occurred more than three
13 and a half years after he stopped working at the Tesla
14 facility; correct?

15 A. Yes, ma'am. After he stopped working at the Tesla
16 facility, he started hanging with the wrong people.

17 Q. And so for that three-and-a-half-year period, he had other
18 jobs and other relationships and other things were going on
19 with his life; correct?

20 A. I believe he could have may have had another job.

21 Q. And he was living in your house during that time with your
22 wife and his older sister, La'Drea Jones; correct?

23 A. No, that is not correct. He wasn't with us all that time.

24 Q. And, in fact, you're seeking emotional distress damages
25 because you blame Tesla for what has happened to your son

1 Demetric Di-az when he was employed by West Valley and assigned
2 to work at the Tesla facility; correct?

3 **A.** Yes, ma'am. When I was raising my son, I had a
4 hands-on -- a hands-on thing with him. I basically before that
5 knew where my son was. I knew what he was doing. Me and my
6 son talked a little bit more.

7 As -- after he had left Tesla, me and him started getting
8 more and more distant because of the fact that, like I said, I
9 believe he had -- he knew that I was broken and I couldn't help
10 him.

11 So, you know, he -- he said in his testimony over there
12 that that was the first time he had ever in his life seen his
13 father that he didn't know what to do.

14 **Q.** And at the time your son was working at the Tesla facility
15 he was 19 years old?

16 **A.** Yes, ma'am.

17 **Q.** And, in fact, it's true you do not blame CitiStaff for
18 anything that happened with Demetric Di-az; correct?

19 **A.** My son was never contracted through CitiStaff. My son was
20 contracted through West Valley, ma'am.

21 **Q.** I understand that. That wasn't my question. My question
22 is: Do you blame CitiStaff for the things that happened to
23 your son?

24 **A.** No. CitiStaff wasn't involved in that, ma'am.

25 **Q.** Do you blame Chartwell for any of the things that happened

DIAZ - REDIRECT EXAMINATION / ORGAN

1 with your son?

2 **A.** No, ma'am. Chartwell wasn't involved in that, ma'am.

3 **Q.** Do you blame nextSource for anything of the things that
4 happened with your son?

5 **A.** No, ma'am. nextSource wasn't involved in it, ma'am.

6 **Q.** Do you blame West Valley staffing for things that happened
7 to your son?

8 **A.** Yes, I do, ma'am.

9 **Q.** And you blame Tesla for the things that happened to your
10 son; correct?

11 **A.** Yes, I do, ma'am.

12 **MS. KENNEDY:** Your Honor, I have no more questions.

13 **THE COURT:** All right.

14 Mr. Organ, do you have any redirect?

15 **MR. ORGAN:** Just a little, Your Honor.

16 **REDIRECT EXAMINATION**

17 **BY MR. ORGAN**

18 **Q.** Good morning, Owen. How are you?

19 **A.** Good morning.

20 **Q.** When you were being called the "N" word and *mayate* and
21 those things, did that make your job harder?

22 **A.** Yes, it did.

23 **Q.** And how did it make your job harder?

24 (Cell phone interruption.)

25 **A.** I'm sorry. I apologize. I thought I had that off.

DIAZ - REDIRECT EXAMINATION / ORGAN

1 Q. Judges usually take those if they ring, so...

2 A. Yeah. I definitely thought I had everything off.

3 Q. I better check mine.

4 Okay. I'm good. Yes.

5 A. Can you repeat the question, please?

6 Q. How did it make -- how did -- being called those racial
7 words, how did that make your job harder?

8 A. Well, it's just like somebody is holding you under water.
9 You know, even though you're trying to move and do the things
10 that you need to do, you're still being, you know, subjected
11 and degraded to something.

12 So it's like, you know, it's just -- it's just degrading
13 and demeaning. You know what I mean? It made my job just not
14 that enjoyable, you know. Even though I'm going to put out the
15 same amount of output that I'm putting out, but it's like you
16 start to look on life bleakly, you know.

17 Q. Ms. Kennedy asked you some questions about whether or not
18 Ramon Martinez engaged in any harassing conduct of you between
19 October 17 and the picaninny incident in January. Do you
20 recall with any kind of certainty that conduct did occur or
21 didn't occur during that time period by Ramon Martinez?

22 A. No.

23 Q. Okay.

24 A. No.

25 Q. Do you remember the last time, other than the picaninny

DIAZ - REDIRECT EXAMINATION / ORGAN

1 incident, that Mr. Ramon Martinez used the "N" word or *mayate*
2 or any of those words towards you?

3 **A.** No, I can't recall. It -- it was happening so often that
4 I -- I just was losing track and trying to ignore things.

5 **Q.** Okay. And then my last question has to do with
6 Ms. Kennedy asked you about why you didn't put stuff in
7 writing. Do you remember those questions?

8 **A.** Yes, ma'am -- I mean, yes, sir. I'm sorry. Yes, sir.

9 **Q.** You just tried to promote me.

10 Okay. In terms of your written complaint about the
11 picaninny, at any time after that did you see Tesla do anything
12 to prevent harassment in your workplace like in terms of
13 training any employees about whatnot to do?

14 **MS. KENNEDY:** Objection. Leading.

15 **THE COURT:** Overruled. You can answer.

16 **THE WITNESS:** No, sir. Even after I complained in
17 writing about the picaninny, Mr. Hurtado was still harassing
18 me.

19 **MR. ORGAN:** Okay. No more questions, Your Honor.

20 **THE COURT:** All right. Anything else?

21 **MS. KENNEDY:** No more questions, Your Honor.

22 **THE COURT:** Okay, Mr. Diaz, you can step down. Thank
23 you.

24 **THE WITNESS:** Thank you.

25 (Witness excused.)

READING - DIRECT / ALEXANDER

1 **THE COURT:** And who is next?

2 **MR. ORGAN:** Oh, I forgot my mask. I apologize,
3 Your Honor.

4 La'Drea. Ms. Jones.

5 (Brief pause.)

6 **MR. ORGAN:** I think we'll do Dr. Reading, Your Honor,
7 instead of Ms. Jones.

8 **THE COURT:** Come on up, Dr. Reading.

9 **THE WITNESS:** Thank you, Your Honor.

10 **THE CLERK:** Come on up to the witness stand, remain
11 standing, and I'll swear you in.

12 **ANTHONY EDWARD READING,**
13 called as a witness for the Plaintiff, having been duly sworn,
14 testified as follows:

15 **THE WITNESS:** I do.

16 **THE CLERK:** Please be seated.

17 **THE WITNESS:** Thank you.

18 **THE CLERK:** And then if you could please state your
19 full name for the record and spell it for the court reporter.

20 **THE WITNESS:** Anthony, A-N-T-H-O-N-Y, Edward,
21 E-D-W-A-R-D, Reading, R-E-A-D-I-N-G.

22 **DIRECT EXAMINATION**

23 **BY MR. ALEXANDER**

24 **Q.** Good morning, Dr. Reading.

25 **A.** Good morning, sir.

1 Q. We're going to be doing your testimony without the
2 PowerPoint, so you're aware of that.

3 Can you tell me, what is your occupation?

4 A. I'm a licensed psychologist.

5 Q. And have you been licensed in California?

6 A. Yes. I've been licensed since 1982 when I came from the
7 United Kingdom where I received my training and worked for
8 several years before I came.

9 Q. And did you need to be retrained upon coming to
10 California.

11 A. No. When I came to California, I was granted a waiver of
12 the licensing exam in view of my prior contributions to the
13 field. So there was no retraining and no licensing exam.

14 Q. With regard to your curriculum vitae, since we don't have
15 a visual of it, can you describe your background, your
16 credentials?

17 A. I received a degree in psychology from the University of
18 Wales. And then I went to London and received my clinical
19 training, which in England is a Master of Philosophy degree.
20 And I received that training at the Institute of Psychiatry,
21 which is one of the University of London's postgraduate
22 training institutes.

23 Having completed my clinical training, I went across the
24 road to King's College Hospital, where I took up an appointment
25 as a clinical psychologist providing treatment to patients

1 within the National Health Service in England and remained
2 there for seven years. While at King's, I received a PhD from
3 the University of London and also a faculty appointment in the
4 medical school.

5 And then in 1981 I was recruited to join the full-time
6 faculty in the Department of Psychiatry at UCLA School of
7 Medicine, where I took up an appointment as an assistant
8 professor. And while at -- on the full-time faculty, I was
9 promoted to an associate professor and then a full professor,
10 and I remained a full professor on the clinical or voluntarily
11 faculty at U.C.L.A. School of Medicine.

12 **Q.** Now, during the time frame that you were on the full-time
13 faculty at U.C.L.A., did any of your work deal with work
14 issues?

15 **A.** Yes. As of -- as of -- being there a couple of years, I
16 took up employment in the Center for Health Enhancement, which
17 had a mission to study the effects of work on mental and
18 physical health.

19 And I was also instrumental in obtaining research funding
20 from the MacArthur Foundation to collaborate with five medical
21 schools, one in Sweden and the remainder in the United States,
22 looking at the effects of stress in the workplace.

23 And I also carried out research on physicians and nurses
24 looking at the mitigating effects of control on stress in the
25 workplace.

1 So what we find is where there are high-demand jobs, the
2 ability or perception of control is protective. So I carried
3 out research as well as academic work in the context of
4 workplace stress.

5 **Q.** And have you published your own research?

6 **A.** Yes. I was fortunate enough in England to be funded by
7 the World Health Organization and the Medical Research Council.
8 And then in U.C.L.A. I was funded by the National Institutes of
9 Health, the American Cancer Society, the Kroc Foundation, who
10 funded a program that still exists, on psychoneuroimmunology,
11 which looks at the interface between stress and immune
12 function. And I also was funded by the MacArthur Foundation,
13 and that led to research that was published in the first 20
14 years of my career.

15 **Q.** And in reviewing your C.V., it indicates 77 research
16 papers, 32 chapters in books, and 27 scientific abstracts; is
17 that correct?

18 **A.** Yes, sir.

19 **Q.** And did all of those publications stem from the research
20 programs you were involved in?

21 **A.** Yes. Yes. I was involved and set up a number of research
22 programs.

23 **Q.** Now, is it correct that you have a clinical practice?

24 **A.** Yes, I do.

25 **Q.** And can you describe that?

1 A. Well, over my career, from 1974 I've been heavily involved
2 in patient's care in concert with the patient's treating
3 physician and have had extensive experience treating such
4 issues as depression, anxiety, panic. Until the last two or
5 three years when I cut down my practice, I was involved with
6 patient care more than 50 percent of my time.

7 Q. Have you previously testified as an expert at trial?

8 A. Yes, sir.

9 Q. Approximately how many times?

10 A. I would estimate over 250 times since I first started in
11 1989 in this situation.

12 Q. And are you always retained by the plaintiff?

13 A. No. My office handles retention and whoever contacts us,
14 we're retained. So about 70 percent retention by plaintiff
15 counsel and the remainder by defense counsel.

16 Q. And have you been retained by me or my firm in the past?

17 A. I have. I would say in the last 20 or more years,
18 anywhere from 10 to 15 times.

19 Q. And with regard to your providing an opinion in this case,
20 you have been paid for your time, I take it?

21 A. Yes, sir.

22 Q. And approximately how much have your charges been up to
23 this date?

24 A. I would estimate around \$5,000.

25 Q. And have you performed an evaluation of Owen Diaz in this

1 matter?

2 **A.** I have.

3 **MR. ALEXANDER:** Your Honor, may Dr. Reading testify as
4 an expert in this matter?

5 **MS. KENNEDY:** No objection, Your Honor.

6 **THE COURT:** You may proceed.

7 **MR. ALEXANDER:** Thank you.

8 **BY MR. ALEXANDER**

9 **Q.** So in order to give an overview of what you're going to be
10 testifying to, what are the three questions you'll be
11 addressing in your testimony?

12 **A.** Yes, the three categories on which I will render opinions
13 are:

14 What happened in the workplace from a psychological
15 standpoint, at least the allegations?

16 Did what happened, to the extent they occurred, lead to
17 any psychiatric injury, meaning a psychiatric illness? And if
18 so, I will drill down on the nature of that.

19 And, also, in the event there is evidence for an injury or
20 psychiatric illness, is he or was he a candidate for treatment
21 and how may he be impacted going forward?

22 So those are the three categories of opinion.

23 **Q.** Now, in order to address those issues, can you tell me
24 what steps did you take to obtain information in order to
25 inform your opinions and conclusions?

1 **A.** In this setting, my opinions are based on an extended
2 interview, face-to-face, with Mr. Diaz, which I conducted in
3 October, 2019. October 2nd, I believe.

4 I observed his affect, any expression of emotion during
5 the interview, and tracked when that occurred and what was
6 being discussed.

7 And I also administered psychological testing. I
8 administered two tests: The MMPI-2-RF and the PAI. And these
9 are broad-based tests that have two objectives.

10 The first is to quantify the stress, should it exist, by
11 comparing Mr. Diaz to the normal population.

12 And, secondly, it affords an opportunity to examine his
13 response pattern to detect any potential problems in the way he
14 answered the questions, which could raise the index of
15 suspicion of what we call motivational factors, which are
16 particularly of interest in litigation. Is there a motivation
17 to present more symptoms than may exist because they see some
18 benefit?

19 In this case I was not able to view any records so my
20 opinions are based on those data subject to the absence of
21 records.

22 **Q.** So your first opinion has to do with the alleged work
23 experience. What were your findings in this regard?

24 **A.** Well, my findings are based on Mr. Diaz's report to me.
25 So he reported shortly after joining Tesla, he was subjected to

1 various racial epithets; being called the "N" word, being
2 called "boy," being confronted by coworkers threatening to
3 shoot him, engage in a physical altercation, graffiti or a
4 picture denigrating his race, and also having feces smeared on
5 a cart he and a coworker used.

6 So these were ongoing issues that he reported to me.

7 **Q.** Is there a difference when racial abuse occurs in the
8 workplace?

9 **A.** Yes. So racial abuse in the workplace is different. It
10 has the potential to confer injury owing to the fact that we
11 spend so much time in the workplace. So the potential exposure
12 is greater.

13 Secondly, we can't control what's happening as we can in
14 our personal life. We can remove ourselves from the issue or
15 the people perpetrating the abuse. That may not be possible --
16 is not possible in the workplace where we're dependent on our
17 job for our livelihood.

18 In Mr. Diaz's case, he claimed to me he reported what was
19 going on and was unable to recruit assistance. So he's
20 dependent on others, namely his employer, to intervene, and he
21 conveyed to me he was not able to recruit that assistance.

22 And then, of course, racial abuse, particularly in the
23 workplace where it's pervasive, we are not protected. It has
24 other connotations in terms of evoking fear, given the use of
25 such racial epithets used to describe a person, to remove their

1 identity, and to have connotations of violence historically and
2 also in the present context.

3 And he -- so there were a number of factors that raised
4 the likelihood of a psychiatric injury in the workplace.

5 Q. And what significance do you give to the fact that
6 supervisors were using racial slurs with regard to Mr. Diaz?

7 A. That in general, I think in Mr. Diaz's sense of
8 hopelessness in terms of a -- these were his supervisors and,
9 indeed, the potential for bringing about some change in what
10 was happening.

11 Q. Now, did Mr. Diaz report any other adverse experiences at
12 Tesla?

13 A. He did.

14 Q. And what did he report in that regard that contributed to
15 your opinions and conclusions?

16 A. He reported an incident which he conveyed to me was a
17 turning point in terms of his relationship with his son, whom
18 he -- who also worked at Tesla in another department.

19 And Mr. Diaz conveyed to me that he went to give his son
20 his lunch and while in the presence of his son, an employee of
21 Tesla, a supervisor I believe, used the "N" word, profanity,
22 indicated his dislike, disdain for African-Americans. And this
23 was in front of Mr. Diaz.

24 And he felt at that moment he conveyed to me he lost his
25 son, owing to the inability of a parent to protect their son

1 from such experiences, which Mr. Diaz had an agenda throughout
2 his life to protect his son from what he had experienced
3 himself earlier in his life. And so at that moment he felt he
4 lost his son in terms of his son's respect.

5 **Q.** And how did this alleged racial abuse affect Mr. Diaz?

6 **A.** Mr. Diaz described to me, arising from what was going on,
7 symptoms that would be consistent with threats in the
8 workplace. He described the onset of anxiety, fear of some
9 untoward event occurring to him. He was in a constant state of
10 vigilance. He was always on guard. There was uncertainty as
11 to what might happen at work, and so he always had to be on
12 guard. He could not relax.

13 He also described what we call spillover effects in terms
14 of his home life. So what was going on at work eroded his
15 ability to accomplish restoration at home.

16 He described re-experiencing what was happening,
17 anticipatory anxiety at the prospect of returning to work,
18 difficulty with sleep because he was wrestling with what -- the
19 situation he was in, irritability with respect to his family,
20 spouse in particular.

21 So there were a number of symptoms that developed related
22 to what was going on at work.

23 **Q.** So the symptoms that Mr. Diaz described to you, were they
24 sufficient to set in motion a psychiatric injury?

25 **A.** Yes. In my opinion, given the pervasive nature and the

1 protracted exposure. So this was not a day or two. This was
2 over several months.

3 **Q.** And so what -- based on that, what is the opinion that you
4 have in terms of the diagnosis four?

5 **A.** So my opinion regarding diagnosis is that we see here a
6 confluence of what is necessary to demonstrate a psychiatric
7 injury.

8 So we see a clear and abrupt change in emotion and
9 function on the part of Mr. Diaz. So he denied prior
10 psychiatric symptoms. He denied these issues. They erupted at
11 the time he was exposed to what was going on.

12 The second element required is what was going on. To the
13 extent it happened as claimed would be sufficient to give rise
14 to a psychiatric illness.

15 And the third element we need is the eruption of
16 sufficient symptoms, which he described.

17 So owing to those three factors being present and in a
18 required temporal relationship, I diagnosed Mr. Diaz as
19 developing while working what we call an adjustment disorder
20 with anxiety. And that is a psychiatric illness that develops
21 in response to an external event predominantly with symptoms of
22 anxiety.

23 And then over time when he left Tesla, owing to the
24 effects on him, that condition evolved into an adjustment
25 disorder with anxiety and depressed mood, which entered

1 remission shortly after he returned to work several months
2 later. Although he continues to show, based on my evaluation
3 in October 2019, significant and residual symptoms.

4 **Q.** Now, you understand that Mr. Diaz quit his job and
5 replaced the Tesla job and at least returned to work within
6 four to six months; is that correct?

7 **A.** Yes, sir.

8 **Q.** And do you have some understanding as to whether Mr. Diaz
9 has continuing effects with regard to what he suffered in the
10 workplace at Tesla?

11 **A.** I do.

12 **Q.** And what is your belief as to the continuing effects?

13 **MS. KENNEDY:** Objection. Lack of foundation.

14 **THE COURT:** Overruled. You can answer.

15 **THE WITNESS:** Thank you, Your Honor.

16 **A.** So the effects, at least when I saw him were continuing
17 were based on his affect during the interview, which was
18 instructive, and also the psychological test results that I
19 referred to earlier.

20 So both of those were instructive, in addition to his
21 self-report, in demonstrating continuing effects or residual
22 effects.

23 **BY MR. ALEXANDER**

24 **Q.** Now, you also administered psychological testing. What
25 did you learn from that psychological testing?

1 **A.** Psychological tests were what we call valid. So there was
2 no evidence of any effort by Mr. Diaz to overreport symptoms,
3 to report more symptoms than were not present.

4 He showed elevations on the two scales of depression, on
5 the MMPI-2-RF, which, in spite of him working, in spite of him
6 working in a job as a bus driver, which clearly protects him
7 from what he experienced at Tesla because he's insulated from
8 other people, he described depression and an elevation on a
9 scale, which is called ideas of persecution, which is also
10 instructive in terms of Mr. Diaz's continuing feelings about
11 what happened at Tesla.

12 **Q.** And why is the elevation on the persecution scale
13 noteworthy?

14 **A.** That captures his explanation or attribution. So he
15 doesn't see his symptoms as a result of an issue that we call
16 normative. He sees it as a product of a non-normative event.

17 So normative would be getting ill. Not pleasant, but
18 that's normative. People get ill, unfortunately.

19 Non-normative is an event that should not have happened
20 that is attributable to the actions of others, and that event
21 has the potential to confer greater injury than a normative
22 event.

23 **Q.** Now, did the testing have any other indications?

24 **A.** The testing certainly demonstrated his report was
25 reliable. The testing also showed on the PAI an elevation on

1 the traumatic subscale indicating consistent with trauma.

2 Now, I forgot to mention also I administered the TSI-2,
3 which is a scale that assesses symptoms in the context of
4 trauma. And his scale showed elevations on what we call
5 intrusive experiences. So it suggests that two-years-plus past
6 Tesla, he's still having intrusive or what we call
7 re-experiencing thoughts about what happened. It's still in
8 his mind.

9 **Q.** Now, you've used the term "trauma," but in this instance
10 the trauma consists of just words. Does that undermine the
11 ability to be trauma?

12 **A.** You know, it -- generally it was sort of, you know,
13 "sticks and stones hurt our bones, but words can't hurt us."
14 But there is a whole body of research from Harvard, and also
15 from U.C.L.A., showing that words not even rising to racial
16 epithets, affect the areas of the brain, activate the areas of
17 the brain shown by imaging that are active with physical pain,
18 and some people are more predisposed to that effect.

19 So words translate into changes in brain activity, which
20 activate or stimulate the areas that cause physical pain. We
21 know that it's interesting if you give Tylenol -- which is a
22 central analgesic as most of you know, to someone -- that will
23 diminish the subjective pain from negative social feedback. So
24 there are central effects.

25 And, also, these -- these words in this context have

1 particular cultural, historical significance, and they are
2 associated with the -- with physical violence. And we know
3 from studies these -- this sort of conduct, bullying, racial
4 epithets in the workplace, do give rise to trauma symptoms.

5 **Q.** And so when you talk about people being predisposed, did
6 you take into account Mr. Diaz being African-American?

7 **A.** Yes. So he -- he's African-American. He's had prior
8 experience of what he kind of termed racial profiling with law
9 enforcement many, many years ago and wanted to protect his son
10 from that.

11 **Q.** You mentioned psychological testing also to look at how a
12 person is responding to see if there is any problematic
13 patterns. What were your findings in that regard?

14 **A.** Well, there are five scales on the MMPI-2-RF which assess
15 what we call infrequent responding or a person endorsing a high
16 number of low-frequency items. These scales were all flat.
17 They were all around the mean for a normal population.

18 So what we see here, in spite of Mr. Diaz having elevation
19 on some of the clinical scales, in terms of any possibility of
20 him endorsing symptoms that -- more symptoms than exist,
21 these -- these indices were entirely flat, and so they are
22 consistent with him being a reliable reporter.

23 **Q.** And in terms of what caused Mr. Diaz's psychiatric
24 illness, what is your conclusion in that regard?

25 **A.** Well, we see an intact person going to work. He has seen

1 work as protective. He experiences this conduct. He alleges
2 he experiences it at least.

3 If that conduct occurred, he reported symptoms that we
4 would expect in that context: The symptoms of anxiety,
5 fearfulness at work, the spillover effects at home, the
6 denuding effects on his self-worth. This is a father, a
7 spouse, and having -- and being exposed to that in front his
8 youngest son.

9 So to a reasonable degree of psychiatric probability, the
10 events at Tesla, subject to not reviewing records, to the
11 extent they occurred would have been sufficient to give rise to
12 the psychiatric illness of an adjustment disorder with anxiety
13 evolving to an adjustment disorder with anxiety and depressed
14 mood currently when I saw him in partial remission.

15 **Q.** Now, we have the issue of his son having been convicted of
16 a felony. Does that mean that his current distress is
17 attributable to the issues associated with his son as to the
18 felony and distinguishing that from what occurred inside the
19 workplace and his observation of that?

20 **A.** Well, the chronology of onset of symptoms informs an
21 understanding of causation. So what we do is we look at when
22 symptoms occurred and what was going on to understand
23 causation.

24 So we see the initial onset of symptoms arising from what
25 happened at Tesla. They were certainly impacted by that event

1 when he and his son were both in the same room and exposed to
2 racial epithets. So Mr. Diaz experienced anxiety and
3 depression arising from Tesla.

4 Subsequent to, I think, leaving Tesla, his son -- his son,
5 first of all, was fired; secondly, got off track in a way that
6 had not occurred previously, and then was arrested and charged.
7 And certainly we would attribute a significant part of his
8 distress to what's happening with his son.

9 But, once again, his attributional framework is important.
10 He sees Tesla as instrumental in both his distress and the
11 derailment of his son.

12 And, of course, that may or may not comport with reality,
13 but that attributional framework, A, is important in
14 understanding Mr. Diaz's psychiatric condition; and, B, has
15 some basis to the extent Mr. Diaz is conveying to me what
16 actually happened. Then his attributional framework has some
17 basis. It's not something that's divorced from reality.

18 **Q.** So now that we've talked about the diagnosis, let's talk
19 about the future.

20 Your last category of opinion has to do with mental health
21 treatment. Is Mr. Diaz a candidate for mental health
22 treatment?

23 **A.** Yes, sir.

24 **Q.** And can you tell me what would be the basis of your
25 opinion in that regard?

1 **A.** The basis -- the basis of that opinion would be his
2 residual symptoms, his psychological test results, his
3 expression of emotions during the interview. He became tearful
4 four times while discussing events at Tesla. Regretting having
5 his son come to Tesla. Wishing he quit earlier, but, of
6 course, he couldn't because he needed the job.

7 The fact that he couldn't protect his son, his ambition to
8 protect his son from what he had been exposed to earlier in his
9 life in terms of racial profiling, racial abuse. And then he
10 felt a failure as a parent.

11 So he became distressed and tearful during the discussions
12 of those four topics, not when discussing the loss of his
13 parents. Not when discussing his own youth, but discussing
14 those issues.

15 So he -- my -- did you ask me the treatment? I've
16 forgotten your question. I'm so sorry.

17 **Q.** In terms of his treatment, what did you believe is
18 necessary for future treatment?

19 **A.** Oh. So I would provide a six-month to a year of weekly
20 cognitive behavioral psychotherapy to deal with residual
21 symptoms, to deal with his ongoing issues re-experiencing at
22 Tesla.

23 I would provide for four additional periods of weekly
24 treatment over four weeks in the future in the event of symptom
25 reactivation.

1 And I would also provide for 20 sessions of couples
2 counseling and family counseling to deal with the family
3 dynamics and the couples because his emotional state, to the
4 extent it occurred as claimed, certainly spilled over and
5 impacted the family.

6 **Q.** And when you say six month weekly treatment, we can do the
7 math, but can you tell me what is your understanding of the
8 rate of a therapist to provide therapy for the sessions you
9 would propose?

10 **MS. KENNEDY:** Objection. That's beyond the scope and
11 beyond Rule 26 in his report.

12 **THE COURT:** Is it stated in his report?

13 **MR. ALEXANDER:** I don't know. I don't know that it
14 is.

15 **THE COURT:** All right. Let's move on.

16 **BY MR. ALEXANDER**

17 **Q.** With regard to the prognosis, what is Mr. Diaz's prognosis
18 for the future?

19 **A.** Well, it's fair. He certainly has worked. He got a job,
20 and he actually got a second job. And work is therapeutic.
21 And he's got a job that insulates him from the potential of any
22 issues that occurred at Tesla, to the extent they occurred as
23 claimed, that impact him because he's a driver. So he's in a
24 solitary job, which is ideal. It's protective.

25 So it's important for someone in this situation to recover

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1 their sense of safety at work, and he's accomplished that by
2 obtaining a job that meets those requirements.

3 So he -- he is encumbered with exposure to depression and
4 anxiety, and those are risk factors for the enduring effects.
5 They can change a person because they alter the way the brain
6 works. So treatment is necessary.

7 So his prognosis is improved with treatment. However, the
8 events at Tesla are going to continue, in my mind, regardless
9 of his treatment to color his mental landscape and impact him
10 emotionally in the future. So he's not going to be the person
11 he was prior to going to Tesla.

12 **MR. ALEXANDER:** Thank you very much. Nothing further.

13 **THE COURT:** All right. Ms. Kennedy.

CROSS-EXAMINATION

14
15 **BY MS. KENNEDY**

16 **Q.** Good morning, Dr. Reading.

17 **A.** Good morning, Ms. Kennedy.

18 **Q.** As I understand it, were you retained by Mr. Alexander or
19 Mr. Organ?

20 **A.** The latter. The latter.

21 **Q.** Mr. Organ?

22 **A.** Yes. Thank you.

23 **Q.** And how many times has Mr. Organ's law firm retained you?

24 **A.** I think one other time. I don't know -- I've never --
25 yeah. One time I think.

1 Q. And as part of your retention by Mr. Organ's firm in doing
2 your psychological evaluation, you requested records from him;
3 correct?

4 A. That would be routine, yes, ma'am.

5 Q. And did you receive any records or any documents?

6 A. No.

7 Q. And you requested those records because you wanted them to
8 make sure your opinion was as well-rounded as it could be;
9 correct?

10 A. It would be required to request them, and they're standard
11 to -- so everything I've said is subject to his report being
12 reliable. And I've not been able to review any records, yes.

13 Q. So in your expert opinion, in your expert retention you
14 asked for documents. You did not get any documents from
15 Mr. Organ. And the purpose for requesting those documents is
16 to make sure, at least to some extent, that Mr. Diaz's report
17 to you is reliable or can be confirmed; correct?

18 A. Yes. Those records may or -- may, to some degree, larger
19 or smaller, provide an opportunity to assess the reliability of
20 his report. I don't know what's in them. Sometimes they
21 don't, but that's the intent.

22 Q. So, but that was the intent for requesting the documents
23 that you did not get; correct?

24 A. Yes. Yes.

25 Q. And as I understand, you only spoke with Mr. Diaz one time

1 back in October of 2019; correct?

2 A. Correct.

3 Q. And you have had no contact with Mr. Diaz since then;
4 correct?

5 A. Correct.

6 Q. And you have no idea as to what his current mental state
7 or emotional state is; correct?

8 A. You are correct. Everything I've said is based on his
9 state at that time.

10 Q. And when you met with him back in October of 2019, you
11 talked to him for about two hours or so? Is that about right?

12 A. I think it would be longer than that. I can't remember
13 precisely, but I -- whatever I said in my deposition. But
14 usually the interview is longer than that.

15 Q. Okay. So two to four hours of an actual interview;
16 correct?

17 A. That's correct.

18 Q. And you did the interview after you had him undergo
19 psychological testings; correct?

20 A. That's unusual. I can't remember. Whatever I said in my
21 deposition again, but usually it's the other way around but it
22 could be the way you described it. It's --

23 Q. Dr. Reading, would you like to refresh your recollection
24 with your deposition?

25 A. Thank you.

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1 Q. Do you have a copy up there? If not, I can get you a
2 copy.

3 A. Well, I knew. I don't need to see it.

4 Q. Dr. Reading, I want to make sure it's accurate.

5 THE COURT: And if you could get me a copy.

6 THE WITNESS: Thank you, Ms. Kennedy.

7 (Document tendered to the Court and the witness.)

8 BY MS. KENNEDY

9 Q. Dr. Reading and the Court, if you can go to Page 14,
10 Lines 5 through 9 and just read them to yourself. And let me
11 know if that refreshes your recollection.

12 A. Oh, yeah. For Mr. Diaz, that's right. We set him up for
13 testing and then I interviewed him. Thank you.

14 Q. Okay. So prior to meeting Dr. -- I'm sorry.

15 Dr. Reading, prior to meeting Mr. Diaz and not obtaining
16 any documents, you sent him off to psychological testing;
17 correct?

18 A. Well, when you say we sent him off, it's right in my
19 office.

20 Q. I understand that, sir, Doctor, but you did not administer
21 the testing; correct?

22 A. Well, I presented the testing and the testing is -- I
23 don't recall what we were doing in 2019, but it's usually on
24 computer interface. So no one does anything. He just -- the
25 questions come one at a time on a screen and he just answers

1 them. It's self -- self-report.

2 Q. Understood.

3 But you had not met him, you didn't have any documents,
4 and you decided to have Mr. Diaz undergo three psychological
5 tests: MMPI-2-PF [sic], Personality Assessment Inventory, and
6 the Trauma Symptom Inventory; correct?

7 A. Yes.

8 Q. And you had no idea about what any of the issues were in
9 this matter; correct?

10 A. Yes.

11 Q. And you decided to give Mr. Diaz three psychological tests
12 why?

13 A. Well, they's are standard. So I'm performing an
14 evaluation. Those would be required. So the -- even if
15 someone has no symptoms, we still perform that, those tests to
16 check on that.

17 And, also, they provide an opportunity to assess what we
18 call motivational factors. Do they have a pattern of
19 responding that raises concerns about their motivation? So
20 there's a standard, so that's why.

21 Q. You agree that, Dr. Reading, the Trauma -- the Trauma
22 Symptom Inventory, that's not a standard test?

23 A. You are correct. Those first two are broad-based tests.
24 That is not a standard test. That's a test that's given where
25 there is some suspicion.

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1 But it -- often I do give it. If I'm -- if I'm giving
2 testing first, I give it in the interests of prudence.

3 Q. So Mr. Diaz comes to your office. You decide to give him
4 the MMPI and a PAI test and a non-standard Trauma Symptom
5 Inventory test. And those all have questions about his
6 emotions and things that happened to him; correct?

7 A. Well, not what happened to him. Just emotions.

8 Q. Just emotions.

9 And then after he fills out all of those questions, you
10 then sit down and you talk to him; correct?

11 A. Correct.

12 Q. You would agree that someone being retained by lawyers as
13 part of a lawsuit goes in and does testing, and one of the
14 testings is a Trauma Symptom Inventory about his emotions
15 regarding some unidentified trauma, he then goes and talks to
16 you about the events, would you agree, in your professional
17 opinion, that Mr. Diaz may have been predisposed to talk about
18 certain things in a certain way given the testing you did
19 before you even met him?

20 A. I'm not sure what you're driving at. Certainly, I would
21 be more concerned with testing after an interview than testing
22 before. It's an empirical question. So Mr. Diaz's report was
23 quite circumscribed in terms of the symptoms.

24 So if you look at the Trauma Symptom Inventory, none of
25 the scales were elevated other than the intrusive experiences

1 and, I think, defensive avoidance.

2 The other tests were -- the PAI -- so these tests were not
3 significantly elevated other than in specific scales.

4 And then in talking to him, usually people are concerned
5 when I talk to someone and then they do the testing than this
6 way around.

7 **Q.** And you understood that when Mr. Diaz was coming to meet
8 with you, the purpose was for you to assess him so you could
9 testify on his behalf and his attorneys' behalf in this lawsuit
10 about his emotional distress; correct?

11 **A.** Well, I don't want to nitpick, but I see myself as
12 providing opinions based on the data, not -- I'm not -- I don't
13 consider myself responsive to the attorneys' needs or his
14 needs.

15 But certainly he was coming to my office with the
16 potential motivation to accrue benefit from being with me.
17 Benefit in this case of litigation will be he's going to
18 present a version of events that presumably is self-serving and
19 also present himself in a way that's going to connote an
20 injury. So I would agree with you in that respect.

21 **Q.** Right. So the purpose of Mr. Diaz coming to see you, at
22 least in this context, was to present information,
23 conversation, to present a psychiatric injury because that is
24 what he is seeking damages for in this particular case as what
25 -- as to what you understand?

1 A. Well, I can't say --

2 MR. ALEXANDER: Objection. Argumentative.

3 THE COURT: Sustained.

4 BY MS. KENNEDY

5 Q. Do you understand in this particular case, Dr. Reading,
6 Mr. Diaz is seeking some type of damages for a psychiatric
7 injury; correct?

8 A. I assume so. I haven't seen that, but I'm assuming that.

9 Q. And as part of your evaluation, you looked at the testing,
10 and you spent three to four hours with Mr. Diaz where he told
11 you information about his background, his employment, and in
12 his life; correct?

13 A. And his life, did you say?

14 Q. In his life, yes.

15 A. In his life, yes. I reviewed his whole history. So it's
16 incumbent upon me in a situation where Mr. Diaz presumably --
17 and I don't know what was in his mind. He has an agenda. But
18 I expand the focus of inquiry when I meet with anyone.

19 So I'm not just drilling down on what they are electing as
20 the issue. I expand the focus of inquiry to look at his whole
21 life, his childhood, his work history, his marital history.

22 I'm looking at whether there are other events in his life that
23 would constitute stress. And I'm also looking at whether there
24 have been derailment or symptoms in his life at other times.

25 So we're ruling out. So for one -- one -- when I derive

1 these data, I then conducted what we call a differential
2 diagnostic exercise, which is to step back and look at the data
3 that's been accrued and see if there are other explanatory
4 possibilities that fit the data better than the one being
5 claimed.

6 So are any symptoms a product of a longstanding illness?
7 Does he have a propensity to complain? Does he have a
8 propensity to invoke racial abuse or abuse of other kinds
9 throughout his career? Are there other significant stressors
10 in his marriage and his family and such like?

11 So he may have that agenda, but it's up to me to both
12 expand the focus and, particularly with psychological testing,
13 to see if those tests show that he has an agenda to present an
14 unlikely array of symptoms, which unusually in this case the
15 testing was unequivocally consistent with an absence of
16 motivation and his elevations were quite limited and
17 circumscribed matching what was elicited in the consultation.

18 **Q.** And you would agree that because you're retained as an
19 expert in this particular matter, if Mr. Diaz hypothetically
20 had other stressors in his life, that he, in his opinion, would
21 not benefit and did not tell you, you would not be able to
22 validate whether there were other stressors or not; correct?

23 **A.** He didn't -- if he didn't express stressors to me, I had
24 no way of knowing. They could exist. I can't rule that out.

25 Certainly, if events occurred as claimed at Tesla, they

1 would rise to a level of a significant stressor that would be
2 capable of derailing an otherwise intact individual, but there
3 may be other incidents and I can't speak to those.

4 **Q.** And at the time that you met him in October -- on
5 October 2nd, 2019, you met with him about three to four years
6 after the alleged events occurred at the Tesla factory;
7 correct?

8 **A.** Correct.

9 **Q.** And do you know if Mr. Diaz has sought any type of health
10 or -- healthcare, medical care for his anxiety or his
11 depression? Do you know?

12 **A.** I'm not aware of that. I think his symptoms diminished
13 with his return to work, and that's why I would see that they
14 were active until he returned to work. Shortly thereafter they
15 diminished.

16 I think there was an uptick with this issue with his son.
17 My understanding, at least until -- up to the time I saw him,
18 that he had not availed himself of mental health treatment.

19 **Q.** Okay. So let me break it down. So from the time that you
20 saw him, as of October 2nd, 2019, you have no idea if he sought
21 any type of healthcare or medical treatment for his adjustment
22 disorder; correct?

23 **A.** You mean since?

24 **Q.** No. Prior to the time -- let me rephrase this.

25 So from the time he left in approximately March of 2016

1 until you saw him on October 2nd, 2019, do you have any idea as
2 to whether or not Mr. Diaz sought any type of health -- mental
3 healthcare?

4 **A.** Yes. I asked him that. And to the extent his report is
5 reliable, he did not.

6 **Q.** Right. And -- but he did find another job with AC Transit
7 about six months later, seven months later. Is that your
8 understanding?

9 **A.** He found that job and then replaced it with a better job a
10 few months after that, four or six months later I believe.

11 **Q.** Right. And you understand he likes that job, he enjoys
12 that job, and he's getting paid more money; correct?

13 **A.** My understanding is he likes it. He's paid more. It
14 protects him from the prospect or potential of a repeat of what
15 happened at Tesla. It's a perfect job, in my opinion, and it
16 was therapeutic.

17 My understanding is that with that job he achieved a
18 partial recovery -- a full recovery with residual symptoms; and
19 there was some reactivation of symptoms, which you would expect
20 with the issues with his son.

21 **Q.** So if I understand you your testimony correctly, once he
22 got the bus driver job six seven months later, he obtained full
23 or partial recovery. And then because of his son's issues,
24 which are that he pled guilty to three counts of robbery of a
25 Domino's Pizza store, my question is: You said he diminished

1 because that?

2 **A.** Did I say "diminished"? No. I said "uptick."

3 **Q.** An uptick, okay.

4 **A.** And what we see is that is an uptick both in and of
5 itself, but also in the context of the history. So that's a --
6 that's a composite, if you like. It is the -- it's not just
7 the tragedy of his son engaging in at least an allegation of
8 robbery and the prospect of conviction, but also the historical
9 context of what he and his son experienced and his connection.

10 And that may be -- that's his connection. That may be a
11 *post hoc* argument, if you follow me. So that may be something
12 he's erected *post hoc* or it may be a product of what he and his
13 son experienced.

14 And his experience at that time while working at Tesla, as
15 well as his son, where he perceived a fracture in their
16 relationship and his son perceiving his way of operating as not
17 for him, in other words, to -- he saw his father, if you
18 like -- I don't know how to say this -- sucking it up, just
19 taking the passive response to what was an egregious experience
20 as perceived by his son.

21 **Q.** Okay. I understand that. My question -- let me ask it
22 this way: So at some point according to you, and it's your
23 opinion, Mr. Diaz obtained full or partial recovery when he got
24 this better job at -- driving a bus?

25 **A.** So I would say shortly after.

1 Q. Shortly after that?

2 A. So we see him out of work for about six months. He gets a
3 job. So within months of getting that job, we see a
4 substantial recovery with residual features, which are ongoing.
5 Then we see an uptick.

6 Q. Okay. So my question is: So assuming a few months after
7 he got into this job, so approximately a year or so after he
8 stopped working at the Tesla facility, in your opinion, a full
9 or partial recovery and then he has an uptick.

10 So my question is: Was the uptick -- in your opinion,
11 based on when you saw Mr. Diaz on October 2nd, 2019, was the
12 uptick at the time that the robbery occurred or the time that
13 he -- that Demetric pled guilty to three counts of robbery?

14 I'm trying to just say the time frame. If you can answer
15 that.

16 A. Well, I didn't -- I didn't actually separate the two. The
17 issue that he presented to me was he was pleading guilty and
18 facing incarceration.

19 Q. Okay. And as I understand, when you met with Mr. Diaz in
20 October of 2019, those issues with his son were still pending;
21 correct?

22 A. They were pending in terms of definitive, but he was
23 facing a guaranteed incarceration and over an extended period.
24 He was expecting ten years, I believe.

25 Q. And I understand if someone is diagnosed with an

1 adjustment disorder, as you've diagnosed Mr. Diaz, part of an
2 adjustment disorder, according to the DSM-5 -- you're familiar
3 with this, Dr. Reading?

4 **A.** Yes. Yes.

5 **Q.** -- the DSM-5, part of the differential diagnosis, part of
6 the adjustment disorder can -- may be characterized by guilt;
7 is that correct?

8 **A.** It's an emotion, yes, certainly.

9 **Q.** So if Mr. Diaz feels guilty about bringing his son
10 Demetric Di-az into an environment, according to him, that is
11 very racially hostile and it's awful and there's horrible words
12 being thrown around about him and the like, and Mr. Owen Diaz
13 brings his son into that, and then his son, according to him,
14 is then mistreated, his adjustment disorder could be based upon
15 Mr Diaz's own guilt; correct?

16 **A.** Well, that -- that presumes his adjustment disorder, the
17 symptoms qualifying occurred after those incidents with his
18 son. The onset speaks to the symptoms erupting arising from
19 what was happening, but I would certainly agree.

20 And he became tearful when he talked about his regret of
21 bringing his son into that environment. And he certainly -- if
22 he connects the robbery and the potential incarceration to
23 Tesla, then I would -- I subscribe to your view that there is a
24 significant element of guilt there, responsibility. He's the
25 parent.

1 Q. Understood.

2 And I think you also -- if I understand from your meeting
3 with Mr. Diaz, Mr. Diaz, as you characterized him, is someone
4 who does not have a filter when he talks; correct?

5 A. He characterized himself. I didn't characterize him.
6 Those were his -- those were his words, as I recall.

7 Q. Right.

8 A. Yeah.

9 Q. And Mr. Diaz characterized himself as someone who speaks
10 his mind, doesn't have a filter; correct?

11 A. Yes.

12 Q. And you got the impression in talking to Mr. Diaz that he
13 is someone who can stand up for himself?

14 A. "Can" did you say?

15 Q. Can stand up for himself.

16 A. Yes. Yes.

17 Q. And Mr. Diaz is a confident man?

18 A. Competent?

19 Q. Confident?

20 A. Yes, confident. He had business, two businesses, prior to
21 going to Tesla, yes.

22 Q. And Mr. Diaz is a highly intelligent man, good worker?
23 You found all that to be true?

24 A. He has a strong work ethic. He has strong relations with
25 his children. He has longevity in his marriage. His relations

1 with his parents who are now deceased.

2 Yes, he had problems in his younger life. And he had, as
3 he described to me, as a young man an epiphany. He met an
4 older mentor, and that person changed his life in terms of the
5 path he was following. And he then raised his children to
6 follow that same path. And that was a turning point for him at
7 around age 24, I believe.

8 Q. And you would agree that based on his psychological
9 testing and your evaluations of your -- your psychological
10 evaluation interview with Mr. Diaz on October 2nd, 2019, that
11 Mr. Diaz is someone who has a very high level of pride? You
12 would agree?

13 A. I would, yes.

14 Q. And as part of that pride and part of the guilt, according
15 to him, of bringing his son into this environment, as he
16 describes it, you would agree all of that could contribute to a
17 diagnosis of an adjustment disorder with anxiety and an
18 adjustment disorder with anxiety and depressed mood; correct?

19 A. Well, I certainly wouldn't see it as contributing to the
20 first diagnosis. The anxiety disorder diagnosis is directly
21 attributable to a situation of threat. So Mr. Diaz was exposed
22 to threat, verbal with a connotation of other -- prospect of
23 other actions being taken.

24 But in terms of the adjustment disorder of anxiety and
25 depressed mood, certainly that depression element conforms to

1 what you're suggesting. Because after he left Tesla, we see
2 that his relationship with his son was never the same. He
3 attributes that to what happened at Tesla and his
4 responsibility taking his son there, assuming that that would
5 be a way for his son to embark on a path of -- a positive path,
6 which turned out not to be the case. But not only did the
7 employment fail, but his relationship was fractured and he
8 attributes that to Tesla.

9 And so the depression element would certainly be, in part,
10 a product of what you you're describing, I would agree.

11 **Q.** And, now, since October 2nd of 2019, have you been
12 provided any information from Mr. Alexander or Mr. Organ as to
13 anything that is actually presently going on with Mr. Diaz in
14 his life with respect to his psychological or emotional state?

15 **A.** No. All of my opinions are based on that time point.
16 Since October 2019, I have no knowledge of Mr. Diaz.

17 **Q.** So as of now, you don't even know if he's doing a lot
18 better or anything like that; correct?

19 **A.** Correct. My opinions are based on up to that point in
20 time.

21 **MS. KENNEDY:** Your Honor, I have no more questions.

22 **THE COURT:** All right.

23 Any redirect?

24 **MR. ALEXANDER:** Yes. Yes, please, Your Honor. Thank
25 you.

REDIRECT EXAMINATION

BY MR. ALEXANDER:

Q. First, there was a reference to Mr. Diaz's confidence and his pride. That's the way he described himself when you did the interview?

A. That, I think, is an assessment. Was he confident? He certainly didn't describe himself: I'm confident and proud.

But he is a man that displayed confidence in terms of his family relations, the taking care of children, working, and such like.

Q. And so when you described him having a feeling of helplessness, how does that compare to your belief that he has confidence and pride or had that at the time he was working at Tesla?

A. It's antithetical to his whole being, his whole identity. The way he was treated at Tesla is antithetical, and it echoed his prior experience before he had that epiphany of dealing with racial profiling. It brought him back, and the helplessness, the failure to be able to recruit assistance in dealing with it.

So he was subjected to a situation that was entirely out of his control, antithetical to his identity, his sense of self-worth, his view of himself as a man, as a person that gives respect and expects to receive respect.

And so that explains not only his emotional state while

1 working, but the rumination and the spillover effects while not
2 working, because this embedded itself in his consciousness,
3 this conflict between who he considered himself and the way he
4 was allowing himself to be treated.

5 Q. So then he leaves Tesla and he gets away from the
6 immediacy of that conflict, and you say that he has a partial
7 recovery when he gets a new job.

8 What I'm confused about is you also testified that it
9 changed him forever.

10 A. Yeah.

11 Q. So can you explain the difference between the recovery of
12 getting the job and the change of him forever?

13 A. Well, there are two answers to that. The first is, it
14 changed him forever in that there were residual effects. He's
15 now approaching the world with a different mental landscape.
16 That mental landscape is informed by his experience at Tesla.
17 So it's a shift and that shift is permanent given the duration
18 of exposure.

19 The second explanation is given that experience and the
20 onset of what we can call a threat disorder, the anxiety
21 disorder, the threat disorder, we know the trajectory of that
22 disorder over time is one that is subject to reactivation.

23 So even though he achieves this improvement when he goes
24 to work, he's now vulnerable to reactivation of those symptoms
25 in either situations that echo or resemble what happened at

1 Tesla or other stressful events.

2 And so the threshold by which those symptoms can be
3 reactivated has changed dramatically. So he's altered in that
4 way.

5 **Q.** So the experience that he had at Tesla, he is
6 susceptible -- more susceptible now to having that experience
7 as he goes forward in his life; is that what you're saying?

8 **A.** Yes. He's been altered in that regard, and that's just
9 not psychological, but we would expect his -- imaging studies
10 show with this kind of exposure there are alterations in the
11 way the brain works in terms of the connectivity; that the
12 alarm system is more active, more easily activated.

13 **MR. ALEXANDER:** Thank you very much.

14 **THE COURT:** Anything else?

15 **MS. KENNEDY:** No more questions, Your Honor.

16 **THE COURT:** Dr. Reading, you're excused.

17 **THE WITNESS:** Thank you, Your Honor.

18 (Witness excused.)

19 **THE COURT:** Ladies and gentlemen, timing is excellent,
20 so why don't we take our first break for the day, and we'll be
21 back at 10:15. Please remember the admonitions.

22 (Jury exits the courtroom at 9:59 a.m.)

23 (Proceedings were heard out of presence of the jury:)

24 **THE COURT:** All right. We will be in recess.

25 **MR. ORGAN:** Your Honor?

1 **THE COURT:** Have a seat, everybody.

2 Mr. Organ.

3 **MR. ORGAN:** Yes, Your Honor. I intended to bring this
4 up with the Court before I got delayed by the protest on the
5 bridge; and that is, I was re-reading the designations of
6 Ms. Marconi last night in preparation for reading -- of her
7 video today, and it struck me that two of the Court's
8 rulings -- the Court overruled all the objections and then
9 admitted --

10 **THE COURT:** The designations?

11 **MR. ORGAN:** Yes, Your Honor.

12 I have a concern that perhaps the Court missed two issues,
13 and I have them highlighted, Your Honor. If I could hand these
14 to Ms. Davis and then you could look at them?

15 **THE COURT:** Sure.

16 **MR. ORGAN:** They have to do with --

17 **MS. KENNEDY:** What are they?

18 **THE COURT:** I'll tell you once I see it.

19 (Whereupon document was tendered to the Court.)

20 **THE COURT:** Mr. Organ has highlighted Designation 23
21 and 25.

22 **MR. ORGAN:** Yes, Your Honor.

23 **THE COURT:** Let me take a look at those. And tell me
24 what your concern is.

25 **MR. ORGAN:** So 106 is in evidence, but there is

1 additional testimony, Your Honor, and I didn't want to run
2 afoul -- I mean, I know you already ruled on this, but I'm not
3 sure that you were thinking of your other rulings.

4 106 you've only ruled as admissible for a limited purpose,
5 and so I'm not sure you really wanted to include that
6 discussion.

7 And then the other one, I think, has to do with -- I
8 believe it's 107. I can't remember, but it's a different
9 exhibit that the Court has not admitted.

10 And so I just want to make sure that we can play these,
11 Your Honor.

12 (Brief pause.)

13 **THE COURT:** Well, I appreciate you bringing this to my
14 attention, Mr. Organ. I have to say that I was not -- I think
15 I didn't understand the objection or the way that Tesla --

16 **MR. ORGAN:** I thought that too, Your Honor.

17 **THE COURT:** -- articulated it.

18 **MR. ORGAN:** And the exhibit numbers are different. So
19 to be fair, Your Honor, I can understand that you didn't see
20 that.

21 **THE COURT:** So is there any -- do you want to point my
22 attention to something that you would like to have -- besides
23 the stuff that I have excluded, is there anything that you
24 think that is in these designations that would not be excluded?

25 **MR. ORGAN:** No, Your Honor. In light of the Court's

1 rulings -- obviously, I don't want to have a legal issue if
2 there is an appeal so what I would propose to, Your Honor, is
3 that we take those out over the break, because Ms. Marconi is
4 going to be played very soon after La'Drea Jones, after
5 Mr. Diaz's daughter.

6 So assuming that's okay --

7 **THE COURT:** Yes.

8 **MR. ORGAN:** -- I would -- it might be a little rough.
9 So if we could get just something to the jury that says it
10 might be a little rough, that would be helpful.

11 Thank you, Your Honor.

12 **THE COURT:** I agree.

13 Ms. Davis, if you could hand this back to Mr. Organ.

14 (Document tendered to counsel.)

15 **MR. ORGAN:** Just so it's clear, we will take those two
16 out.

17 **THE COURT:** Take those two out. And I appreciate you
18 bringing this to my attention.

19 **MR. ORGAN:** Okay. Thank you, Your Honor.

20 (Whereupon there was a recess in the proceedings

21 from 10:04 a.m. until 10:18 a.m.)

22 (Proceedings were heard out of presence of the jury:)

23 **THE CLERK:** Please come to order.

24 **MR. ORGAN:** Your Honor, if I may, defense counsel has
25 raised an objection to No. 39 now. I don't believe that it

1 runs afoul of the Court's orders, but --

2 **THE COURT:** You'll have to give it back to me then.

3 **MR. ORGAN:** Okay. Then I'll give it to you right now.
4 Is that okay?

5 **THE COURT:** Yeah.

6 (Whereupon document was tendered to the Court.)

7 (Brief pause.)

8 **THE COURT:** Yeah. No, I'll allow this.

9 **MR. ORGAN:** Thank you, Your Honor.

10 **THE COURT:** Objection overruled.

11 Ms. Davis also provided me with a sheet that the top says
12 "Tesla, Inc. Selected Financials," which I assume was part of
13 a -- is part of a demonstrative. And my ruling is as I
14 indicated before court.

15 The quarter ending 6/30/2021 numbers would have been
16 admissible, I think, and that you could have changed that if
17 you provided it earlier, but providing it on the night before
18 testimony is improper. So that should be deleted.

19 **MR. ORGAN:** Okay. And, Your Honor, we have an issue
20 with respect to -- not an issue.

21 We've got Exhibit 3 with a redacted form. So we would
22 like to move it into evidence once the jury comes back or
23 whatever the Court prefers.

24 **THE COURT:** So Exhibit 3 was the contract. Is there
25 agreement on its admission?

1 **MS. KENNEDY:** That was the issue in the emails we had
2 about Exhibit 379, because Annalisa Heisen was going to be the
3 person to authenticate and she can't come in so we have to
4 bring someone else in.

5 But why don't I talk to Mr. Organ about it because we have
6 to bring in another witness who is going to authenticate
7 something simply for the fact of authentication?

8 **THE COURT:** Right. So if you can go back to that
9 original stipulation and if the plaintiff agrees to it, then
10 the problem is solved. If that's not what's happening, then
11 let me know.

12 **MS. KENNEDY:** All right. Thank you, Your Honor.

13 **MR. ORGAN:** There was no stipulation by us that they
14 could bring in 379.

15 **THE COURT:** Right. And I ruled that as a result, at
16 the moment you haven't established how that document comes into
17 evidence.

18 **MR. ORGAN:** How this document, how Exhibit 3, the
19 contract.

20 **THE COURT:** Correct. And as I understand it, you had
21 some conversation about the -- Exhibit 3 and the exhibit
22 involving Mr. Diaz's son's application and that both could come
23 in --

24 **MR. ORGAN:** No. No. No.

25 **THE COURT:** -- and you rejected it.

1 **MR. ORGAN:** Yes.

2 **THE COURT:** And so 3 at the moment is not coming in.
3 That's status quo.

4 **MR. ORGAN:** Except, Your Honor, the difference is 379
5 was never an exhibit. They didn't put it on any Exhibit List.
6 They brought it to trial.

7 **THE COURT:** Mr. Organ --

8 **MR. ORGAN:** They never had it.

9 **THE COURT:** Mr. Organ, you don't have a witness who
10 can authenticate that document. You did not have one,
11 apparently, during discovery.

12 You know, at this point there seems like a pretty
13 simple -- Exhibit 3 is important. There seems like a pretty
14 simple solution to this, but I'll leave that up to you. I'm
15 not trying this case.

16 **MR. ORGAN:** They have stipulated it's authentic,
17 Your Honor. They just haven't stipulated it's admissible.

18 **THE COURT:** Right. And you don't have a witness who
19 can make it admissible.

20 **MR. ORGAN:** Because the witness is having a baby right
21 now.

22 **THE COURT:** Mr. Organ, we've had this conversation.
23 My ruling remains.

24 **MR. ORGAN:** Okay. I understand, Your Honor.

25 (Jury enters the courtroom at 10:25 a.m.)

JONES - DIRECT / NUNLEY

1 **THE COURT:** All right. Please be seated, everybody.

2 Who's the next witness?

3 **MS. NUNLEY:** La'Drea Jones, Your Honor.

4 **THE CLERK:** If you step up and remain standing, I'll
5 swear you in.

6 **LA'DREA JONES,**

7 called as a witness for the Plaintiff, having been duly sworn,
8 testified as follows:

9 **THE WITNESS:** Yes.

10 **THE CLERK:** Be seated.

11 If you would state your full name for the record and spell
12 it for the court reporter.

13 **THE WITNESS:** My first name is La'Drea, L-A'-D-R-E-A,
14 and my last name is Jones, J-O-N-E-S.

15 **THE COURT:** Please proceed.

16 **DIRECT EXAMINATION**

17 **BY MS. NUNLEY:**

18 **Q.** Good morning, Ms. Jones.

19 **A.** Good morning.

20 **Q.** Do you know Owen Diaz?

21 **A.** Yes.

22 **Q.** How do you know Mr. Diaz?

23 **A.** He's my dad.

24 **Q.** And has he been your dad your whole life?

25 **A.** Yeah. Well, he's my stepdad. So 28 years.

1 Q. And are you close to Mr. Diaz?

2 A. Yes, I am close with him.

3 Q. Would it be fair to say that Mr. Diaz raised you?

4 A. Yes.

5 Q. Do you presently live with Mr. Diaz?

6 A. Yeah, we do live together.

7 Q. And how long have you lived in the same house as Mr. Diaz?

8 A. My whole life basically.

9 Q. And during the 2015 to 2016 time period, did you spend any
10 time living away from your family?

11 A. I moved to Las Vegas in the beginning of 2016. So
12 January 2016.

13 Q. And did you return back to your family's house at some
14 point?

15 A. Yeah. I moved back in December. So I just lived in
16 Las Vegas for one year.

17 Q. Just for a clear record, when you say "December," you mean
18 December of 2016; is that right?

19 A. Yes. Sorry. December 2016.

20 Q. And while you were living at home in the 2015 to early
21 2016 time period, how often did you see Mr. Diaz?

22 A. Every day.

23 Q. And while you were living away from home during 2016, how
24 often did you speak with your dad?

25 A. When I was living away, I spoke with him, you know, every

1 other day, check-in when I called him or my mom.

2 Q. Did you ever become aware that Mr. Diaz started working at
3 the Tesla factory at some point?

4 A. Yes.

5 Q. Do you recall approximately when you became aware of that?

6 A. He started working at Tesla 2015. Maybe June or July of
7 2015.

8 Q. I see. And were you living with your family when you
9 started working at Tesla -- or when Mr. Diaz started working at
10 Tesla? Pardon me.

11 A. Yes, I was living at home when my dad started working at
12 Tesla.

13 Q. Now, before your dad started working at Tesla, could you
14 tell me a little bit about his personality?

15 A. Yeah. Before he started working at Tesla, he was always
16 joking. He was, you know, a typical dad. Called -- or make
17 sure I was, like, going where I said I was going, what time I
18 was coming home, who I was going with. He would, you know,
19 make sure I was doing okay, joking with me, very talkative, and
20 stuff like that.

21 Q. And after Mr. Diaz started working at Tesla, did you
22 notice any changes to his personality?

23 A. Yeah. When he started working at Tesla, he got more
24 moodier. He became more sad. He stopped asking me, like,
25 those dad questions.

1 Like, he didn't ask me, like: Where are you going? Who
2 are you going with? And I would have to, like, call him and
3 tell him: Hey, Dad, I made it. I'm here at this place with
4 this person. Because, you know, he didn't really do that
5 anymore.

6 **Q.** And before your dad started working at Tesla, did he ever
7 talk to you about his job or his work?

8 **A.** No.

9 **Q.** And when did you first notice the change to your dad's
10 personality when he became moodier or sadder?

11 **A.** I first noticed maybe, like, September of 2015.

12 **Q.** And does the September 2015 date stand out to you for any
13 particular reason?

14 **A.** I -- because -- well, that date stands out to me because
15 my dad is really joking. He always jokes with you and with all
16 my friends, because they're my friends. They automatically,
17 you know, become like his kids. And he would always give my
18 friends, like, nicknames.

19 And my best friend's name is Hailey, and he called her
20 Sam, for whatever reason, because it's not the name Hailey.
21 And he would call her Sam. And it was her birthday and she
22 came over. And I told him, like: Today is Sam's birthday,
23 Dad. And he said: Happy Birthday, Hailey. That's all. He
24 didn't say: Happy Birthday, Sam. He didn't ask her, like:
25 Hey, how's Carlson doing? And that's her brother. And his

1 name is Carson. He always called him Carlson, and he'd always
2 joke with her. He didn't say any of that. Just: Happy
3 Birthday, Hailey. That's all.

4 **Q.** And so it sounds like that this kind of more serious, less
5 joking behavior, that was out of character for your dad; is
6 that right?

7 **A.** Yes. Correct.

8 **Q.** Did you notice any changes to Mr. Diaz's sleeping habits
9 in the -- after he started working at Tesla?

10 **A.** Yeah. I would catch him maybe, like, a few times a week
11 staying up late, like, 3:00, 4:00 a.m. Just downstairs
12 watching TV in the dark. Not really doing anything, but
13 staying up.

14 **Q.** And when did you first notice Mr. Diaz watching TV at 3:00
15 in the morning?

16 **A.** That probably was also in September. Because once -- you
17 know, once he just nonchalantly told Hailey Happy Birthday, I
18 would notice little things. So maybe also in September-October
19 I noticed him really staying up lately.

20 **Q.** And did this behavior of Mr. Diaz, staying up and watching
21 TV until the small hours of the morning, did that happen more
22 than once?

23 **A.** Yeah. I would notice him maybe like two times a month,
24 maybe three times a month.

25 **Q.** And did that behavior continue even after you returned

1 from Las Vegas in late 2016?

2 **A.** Umm, no. By that time, he would sleep normal. My mom
3 always used to go to sleep at, like, 6:00. And then I would be
4 next and, you know, then I would get up at, like, 11:00 to use
5 the bathroom. He would be asleep by then, so...

6 **Q.** Does he still stay up until 3:00 in the morning watching
7 TV?

8 **A.** No, not now.

9 **Q.** And you said -- you mentioned earlier that your dad also
10 became less talkative after he started working at Tesla.
11 Before he started at Tesla, how often did you speak with him?

12 **A.** We talked every day. Literally every day we talked. And
13 when he started working -- while he was working at Tesla, we
14 talked maybe, like, once or twice a week and it would be very
15 vague, very minimum.

16 **Q.** And this pattern of your dad only giving you vague,
17 minimum talk, did that continue after you moved to Las Vegas in
18 early 2016?

19 **A.** I would mostly talk to my mom because my dad wouldn't, you
20 know, answer the phone or he wouldn't, like, get on the phone
21 with my mom for the check-in. I would, like, speak with my mom
22 and then talk with my dad for a little bit, but it was -- it
23 was kind of the same.

24 **Q.** I see. And this behavior of your dad not getting on the
25 phone for check-in calls, was that normal for him?

1 A. No, it was not normal at all. Like I said, my dad was,
2 like, always joking and if -- even if he knew the answer, he
3 would still ask me the question. He would always, like: Where
4 are you going? And I would tell him: Oh, I'm going -- I don't
5 know -- to the grocery store. Okay. Who are you going with?
6 I'm going with Hailey. Okay. How long are you guys going?
7 I'm going only for an hour. Okay. Who are you going with? I
8 just said I'm going with Hailey. It wouldn't be that. It
9 wouldn't be that anymore.

10 Q. And does your dad still display these moody and less
11 talkative behaviors?

12 A. Oh, no. He's all up in my business now.

13 Q. And did you ever directly talk to your dad about why his
14 mood and personality seemed to change?

15 A. No, I didn't.

16 Q. And why not?

17 A. Umm, because my dad is -- you know, he's a man. He's my
18 dad. He doesn't want me to worry. And if he feels, like, he
19 can, you know, take that on his own, he'll, you know, take that
20 pain or whatever it is on his own and figure it out on his own
21 and not worry me about it. I'm his daughter.

22 Q. Did your dad ever speak about his -- to you about his
23 experiences at the Tesla factory.

24 A. No.

25 Q. Did he ever tell you that he had experienced racial

1 discrimination or harassment?

2 A. No.

3 Q. Has your dad ever discussed this lawsuit with you?

4 A. No.

5 Q. So when you're talking about his changed personality,
6 what's that based on?

7 A. Just like knowing him, him being my dad.

8 Q. Now, to shift topics a little bit. At any point in time
9 did you apply for a job at Tesla's Fremont factory?

10 A. I did, yes.

11 Q. Do you recall approximately when that was?

12 A. Umm, 2015 also.

13 Q. Was that -- did you apply before or after your dad started
14 working at Tesla?

15 A. After.

16 Q. And do you know anyone else who worked at Tesla?

17 A. I'm sorry. What was the question?

18 Q. Do you know anybody else who worked at Tesla?

19 A. Yes. My brother.

20 Q. And when you say your brother, is that Demetric Di-az?

21 A. Yes. Sorry.

22 Q. And had Demetric started working at Tesla when you
23 applied?

24 A. He wasn't working there yet, no.

25 Q. And how long had your dad worked at Tesla before you

1 applied?

2 A. Maybe, like, one or two months, one and a half months.

3 Q. And when you completed the application to work at Tesla --
4 or before you completed the application to work at Tesla, did
5 anybody suggest you apply?

6 A. No.

7 Q. Did anybody refer you to work at Tesla?

8 A. No.

9 Q. Did you talk to anyone about the work environment in the
10 Tesla factory before you applied?

11 A. No.

12 Q. Did you speak with your dad before you applied to work at
13 Tesla?

14 A. Umm, I didn't speak with him. I probably just told him
15 like: Hey, I applied for Tesla and Target and all the other
16 applications I did that day.

17 Q. So just to make sure I'm understanding you right, you told
18 your dad you applied at Tesla, but that was after you completed
19 the application; right?

20 A. Correct.

21 Q. And why did you apply for a job at Tesla?

22 A. Umm, I needed an extra job.

23 Q. Was there anything special about the position at Tesla
24 that made you apply there over somewhere else?

25 A. No.

1 Q. And at the time -- you mentioned earlier that you told
2 your dad: I applied to Tesla and Target and some other jobs.

3 Were you applying to work for other companies at the time
4 you were applying to work at Tesla?

5 A. Yeah. I did, like, I don't know, maybe six applications a
6 day. I still do that now because I'm broke.

7 Q. And how did you find out that Tesla was hiring?

8 A. I'm pretty sure it was, like, Indeed, Craigslist. One of
9 those websites.

10 Q. And you mentioned that you told your dad after you
11 completed the application that you had applied. Did he say
12 anything in response?

13 A. He was just probably like, "Okay." But he didn't say
14 anything really.

15 Q. Did you get an interview after you applied for that job at
16 Tesla?

17 A. Yes.

18 Q. And did you get hired after the interview?

19 A. Unfortunately not.

20 Q. Can you describe the format of the interview for me?

21 A. Yeah. It was just like a two-part interview. The first
22 part is just like the standard, like: Here's my resume. This
23 is what I'm capable of.

24 And then the second part, they had, like, a -- I don't
25 even know what to call it. Like a hands-on, like, skill test.

1 And they make you, like, I don't know, do hands-on stuff. And
2 I am not a hands-on person. So, yeah, I failed that part.

3 Q. And how did you know you failed that part of the
4 interview?

5 A. Oh, they tell you right after.

6 Q. And is that why you weren't hired?

7 A. Yes.

8 Q. Did you tell your dad that you didn't get the job at
9 Tesla?

10 A. Yes.

11 Q. What was his response?

12 A. He just said: I'm glad you didn't get it.

13 Q. And did he tell you why he was glad?

14 A. No.

15 Q. Did you ever apply to work at Tesla again?

16 A. No.

17 Q. If you had the chance, would you apply for a job at Tesla
18 again?

19 MS. KENNEDY: Objection. Relevance.

20 THE COURT: Sustained.

21 MS. NUNLEY: No further questions.

22 THE COURT: Ms. Kennedy.

23 **CROSS-EXAMINATION**

24 **BY MS. KENNEDY**

25 Q. Good morning. Ms. Jones. How are you?

1 You say you've got a really close relationship with your
2 father, Mr. Diaz?

3 **A.** Yes.

4 **Q.** He sounds like a dad of a daughter making sure he knows
5 where you are at all times?

6 **A.** Yeah.

7 **Q.** Would you say that's been the case your entire life with
8 him?

9 **A.** Yeah.

10 **Q.** And he's a good dad?

11 **A.** Yes, a great dad.

12 **Q.** A great dad. And you would agree he must make sure you're
13 safe at all times?

14 **A.** Correct.

15 **Q.** And when you applied for the job at Tesla, did you tell
16 anybody in your family that you're living with, your brother or
17 your father, that you had applied?

18 **A.** Prior to applying, no. After, I just told them, like:
19 Hey, I applied to Tesla and, like I said, all the other jobs
20 that I already applied to.

21 **Q.** And at the time that you applied, you knew that your
22 father was working there, but your brother had not applied;
23 correct?

24 **A.** Yeah. I knew my dad was working there and not my brother.

25 **Q.** And do you recall if you applied to work at Tesla in,

1 like, June or July of 2015?

2 **A.** I applied maybe August because my dad had been working
3 there already. So I applied in maybe August.

4 **Q.** Do you know if that's approximately the same time that
5 your brother Demetric applied to work at Tesla?

6 **A.** Umm, I think he started, like, the end of August, maybe
7 the beginning of September, but he hadn't been working there
8 yet.

9 **Q.** Okay. So you're saying he may have applied but he
10 actually hadn't started at the time that you applied?

11 **A.** Oh, I don't know if he applied at the same time as me. I
12 just know he started working there after. I don't know if he
13 had applied already.

14 **Q.** And when you applied, say, in that -- I guess that summer
15 of 2015, did you recommend to your brother that he should
16 apply, too?

17 **A.** No.

18 **MS. NUNLEY:** Objection, Your Honor. Beyond the scope.

19 **THE COURT:** I'm sorry?

20 **MS. NUNLEY:** Beyond the scope.

21 **THE COURT:** Overruled. You can continue.

22 **BY MS. KENNEDY**

23 **Q.** You said you saw that Mr. Diaz's, your father's, mood
24 changed when he was working at Tesla sometime around September.
25 And so from September until about December of that year, you

1 were living with your father and your brother and your mother?

2 A. Yes.

3 Q. And then you moved to Las Vegas in approximately January
4 of 2016?

5 A. Yes.

6 Q. And so after January 2016, how often did you actually see
7 your father?

8 A. Umm, I didn't see him. I lived in Las Vegas.

9 Q. Right. So, but, like, did you come home for, I don't
10 know, spring break or holidays or anything like that, if you
11 recall? I know it's a long time ago.

12 A. While I lived in Las Vegas, I probably came home -- I know
13 for a fact I came home once because it was my best friend's
14 little sister's birthday. It was Hailey's little sister's
15 birthday. So once, maybe twice I came home. So I saw him
16 within that time.

17 Q. So maybe once or twice in the calendar year 2016?

18 A. Yes, but we spoke every day, like I said, when I spoke
19 with my mom.

20 Q. And so in that time period, say from September of 2015
21 through December of 2015, is that the time period where your
22 dad was, I guess, up at 3:00 or 4:00 in the morning? Is that
23 the time period you're talking about?

24 A. Yes. September 2015 to when I moved 2016, he was up.

25 Q. Okay. And do you know what shift he was working at the

1 Tesla factory during that September through December 2015 time
2 period?

3 A. No. I don't know.

4 Q. Did you ever understand that he was working the 6:00 p.m.
5 to 6:00 a.m. shift?

6 A. I am not sure.

7 Q. Okay. Do you know how many days a week he was working at
8 the Tesla facility? Was it, like, five days a week? Four days
9 a week? Do you have any idea?

10 A. Umm, he was working a full -- like, full-time schedule I'm
11 sure, but I don't know which days.

12 Q. And since he has been working at AC Transit, is he back to
13 being your dad?

14 A. Yes, he is.

15 Q. Is he joking all the time?

16 A. Yeah. Actually, he jokes all the time. He was just
17 joking with me the other day. He's supposed to be fixing my
18 bathroom, but he jokes about it: Oh, I'll get to it. And, you
19 know, still no bathroom, but...

20 Q. Is he joking around with your through friends, like your
21 friend Hailey? He's back to that dad?

22 A. Yeah. He calls Hailey "Sam" all the time now. She was
23 just over the other day, and he was like: Sam, you gained
24 weight. Hailey has not gained weight since I've known her.

25 Q. Would you say now that he's the dad you've known and loved

1 your entire life?

2 **A.** Yeah.

3 **Q.** He's back to that dad?

4 **A.** Yeah.

5 **Q.** All right. Thank you.

6 **A.** Okay. Thank you.

7 **THE COURT:** Ms. Nunley, anything further?

8 **MS. NUNLEY:** No. Nothing further, Your Honor.

9 **THE COURT:** Okay. Thank you. You can step down.

10 (Witness excused.)

11 **THE COURT:** Who is the next witness?

12 **MR. ORGAN:** Your Honor, we would be playing the video
13 of Erin Marconi.

14 **THE COURT:** Okay.

15 **MR. ORGAN:** There is 26 minutes of plaintiff time and
16 4 minutes of defense time. It's all together.

17 **THE COURT:** Okay. So, ladies and gentlemen, we're
18 going to have another videotaped deposition. And, as I said
19 yesterday, when a witness has a deposition, they're sworn under
20 oath to tell the truth and you are to view this testimony just
21 as if it was being given here live in court.

22 The other thing, the deposition has been spliced up a
23 little bit, and so what's -- you should consider the words that
24 are under it, which are from the deposition transcript, even if
25 there's some problem in the editing and things get cut off a

MARCONI - VIDEOTAPED TESTIMONY

1 little bit as they did last time.

2 So with that, let's hear from Ms. Marconi.

3 **ERIN MARCONI**,

4 called as a witness for the Plaintiff herein, testified via
5 videotaped deposition played in open court, not reported.)

6 **MR. ORGAN:** And, Your Honor, 37 is Exhibit 33, which
7 has been admitted.

8 **THE COURT:** Okay.

9 (Videotape resumed, not reported.)

10 **MR. ORGAN:** I'm sorry, Your Honor. Exhibit 274 is
11 Exhibit 34. We move Exhibit 34 into evidence.

12 **THE COURT:** Is there any objection?

13 **MS. KENNEDY:** I don't think so, Your Honor. Let me
14 just double check.

15 **THE COURT:** Yeah, go ahead.

16 (Videotape resumed, not reported.)

17 **THE COURT:** No, no. Stop the deposition. Please
18 stop.

19 Thank you.

20 Ms. Kennedy needs to confirm that it's okay to admit the
21 document.

22 **MS. KENNEDY:** Your Honor, I believe it's a duplicate
23 of Exhibit 274. That's why I was checking. So 274 is already
24 admitted.

25 **THE COURT:** So you have no objection to this

1 proceeding?

2 **MS. KENNEDY:** No. But I think for the record we
3 should probably call it Exhibit 274 so it's not a duplicate.

4 **THE COURT:** Yeah. Okay. All right.
5 You can proceed.

6 **MR. ORGAN:** Yes. I apologize.
7 (Videotape resumed, not reported.)

8 **THE COURT:** All right. That concludes Ms. Marconi's
9 testimony.

10 Who's next?

11 **MR. ORGAN:** Our next witness is a Zoom witness. Amy
12 Oppenheimer, Your Honor.

13 **THE COURT:** Okay.

14 **MR. ORGAN:** I don't know how we technically do that.
15 I'm wondering if it might make sense to have an early break so
16 we can set that up so we maximize the time?

17 **THE COURT:** I think that's probably a good idea.

18 So, ladies and gentlemen, let's take a 15-minute break and
19 so we'll come back at about 25 of. Please remember the
20 admonitions.

21 (Jury exits the courtroom at 11:19 a.m.)

22 (Proceedings were heard out of presence of the jury:)

23 **THE COURT:** All right. We'll be in recess.

24 (Whereupon there was a recess in the proceedings
25 from 11:19 a.m. until 11:37 a.m.)

1 (Proceedings were heard out of presence of the jury.)

2 **THE CLERK:** Please come to order.

3 **THE COURT:** Be seated, everybody, please. We'll get
4 the jury.

5 **MR. ORGAN:** In terms of her demonstrative, my
6 understanding is your ruling was that we couldn't have any
7 reference to, I think, three exhibits in there. Can we still
8 use her demonstrative or not?

9 **THE COURT:** It depends. It has to exclude the things
10 that I excluded.

11 **MR. ORGAN:** Yes.

12 **THE COURT:** Anything else, Ms. Kennedy?

13 **MS. KENNEDY:** Yes, Your Honor. This also goes beyond
14 the Rule 26 report, and I got this late last night.

15 So she was deposed in March of 2020. Her report was -- I
16 got it last night, and it has other information that was beyond
17 the scope of the Rule 26 report, and it also includes exhibits
18 that are not admitted and excluded as well.

19 **THE COURT:** So I don't have the document. The order
20 from this morning is that everything that wasn't in the report
21 should be excluded, and it should be consistent with the orders
22 that I've made during the course of the trial. And if the
23 demonstrative includes that stuff, at this point it shouldn't
24 be used.

25 **MR. ORGAN:** Your Honor, with regard to the exhibits,

PROCEEDINGS

1 we've extracted the exhibits. I have -- it is unclear to me
2 what it is that still remains inside the document that violates
3 Rule 26. And so I -- I had believed by extracting those
4 exhibits, we had taken care of the issue.

5 **THE COURT:** All right. So read the demonstrative and
6 -- that's -- that's the job of a lawyer in the middle of a
7 trial. So if you're going to object to things, Ms. Kennedy,
8 because they're beyond the scope of the report, you need to be
9 specific.

10 And I'll go off and tell me when you've looked at it, read
11 it, and you've conferred with the opponent. And if you have a
12 disagreement, then bring me the demonstrative so that I can
13 make a ruling.

14 **MS. KENNEDY:** Your Honor, I will do that. I don't
15 know what they've changed in the PowerPoint.

16 **THE COURT:** Now you have it.

17 (Document tendered to counsel.)

18 **MS. KENNEDY:** Okay.

19 (Whereupon there was a recess in the proceedings
20 from 11:39 a.m. until 11:42 a.m.)

21 (Proceedings were heard out of presence of the jury:)

22 **THE CLERK:** Please come to order.

23 **THE COURT:** Be seated, everybody.

24 Is there a resolution or do I need to make a decision?

25 **MR. ORGAN:** There is a resolution, Your Honor.

1 **MS. KENNEDY:** Your Honor, I don't want to waste any
2 more of the jury's time. We can proceed.

3 **THE COURT:** All right. So any objections to the
4 demonstrative at this point are moot.

5 And let's get the jury.

6 (Jury enters the courtroom at 11:43 a.m.)

7 **THE COURT:** All right. Please be seated, everybody.
8 Ladies and gentlemen, our next witness is going to be
9 appearing over Zoom.

10 And, Mr. Organ, who would that be?

11 **MR. ORGAN:** Amy Oppenheimer, Your Honor.

12 **THE COURT:** All right. So, Ms. Davis, if you would
13 swear Ms. Oppenheimer.

14 **THE CLERK:** Okay. Ms. Oppenheimer, if you'll raise
15 your right hand.

16 **AMY OPPENHEIMER,**
17 called as a witness for the Plaintiff, having been duly sworn,
18 testified as follows via Zoom:

19 **THE WITNESS:** I do.

20 **THE CLERK:** Thank you.

21 **THE COURT:** And if you would state your full name and
22 spell it for the record, please.

23 **THE WITNESS:** Amy Oppenheimer, O-P-P-E-N-H-E-I-M-E-R.

24 **THE COURT:** All right. Mr. Organ, please proceed.
25

OPPENHEIMER - DIRECT / ORGAN

DIRECT EXAMINATION

BY MR. ORGAN

Q. Where are you employed, Ms. Oppenheimer?

A. I am a partner in a law office in the Bay Area, Oppenheimer Investigations Group.

Q. What does your office do?

A. We do almost exclusively both workplace and school investigations. I had a sole proprietorship till last year and then became a partnership as we expanded.

We have 15 attorneys doing about 90 percent investigations in both workplaces and educational institutions. We also do training, some mediation, and expert witness work.

Q. Do you train any HR professionals?

A. Yes. We train HR professionals, employees, supervisors, and attorneys in how to recognize, prevent, respond, investigate, and also some bias training.

Q. What percentage of your work is expert testimony?

A. Umm, probably less than 5 percent at this point. I do one or two cases a year.

Q. Have you testified in court before as an expert?

A. I have. About a dozen times.

Q. And in terms of -- what's your area of expertise in terms of preventing harassment, discrimination, and investigating it?

A. Well, I have been an attorney since 1980. And in the 1980s I represented women who have been sexually harassed, and

1 then got interested in prevention.

2 I did not like litigation and wanted to see what I could
3 do to help stop the situations before they got to that point.
4 So I got involved in training, both -- in how to do
5 investigations. I was also doing some investigations in the
6 1980s for the federal government as part of my law practice.

7 And interested in reverse engineering, how problems got to
8 where they were. So started mainly with sexual harassment,
9 expanded that to all forms of workplace harassment.

10 Then got a position as an Administrative Law Judge with
11 the State of California and for a few years was not involved in
12 that, but then started working part time with the permission of
13 the State and added back in doing investigations and training.

14 And at that point in about 2003 I authored a book for
15 SHRM, the Society of Human Resource Management, in how to do
16 investigations. By then I was doing extensive training of
17 human resource professionals and also attorneys in how to
18 investigate.

19 And then in 2009 I founded a professional organization for
20 workplace investigators as a big-tent organization so that many
21 of our members are from human resource backgrounds rather than
22 attorneys. Some are private investigators.

23 The organization expanded to be a worldwide organization
24 and now has about 1500 members. I'm no longer on the Board. I
25 was the president of the Board for three years and then the

1 immediate past president.

2 I helped develop our materials, which is the first program
3 that provides a certificate in how to investigate.

4 And we've now done an institute since 2011, starting once
5 a year, then twice, up to now I think four or five times a
6 year, and provide a certificate to people who successfully
7 complete and pass a rather rigorous program and test.

8 I also was appointed to a task force on sexual harassment
9 in California through the Department of Fair Employment and
10 Housing, and in that capacity I was on a subcommittee that
11 wrote the Guidelines for employers on how to prevent and
12 respond. Again, that focused on sexual harassment, but it
13 really applies to all forms of workplace harassment and there's
14 an extensive portion on investigations that I co-authored.

15 I've also been involved with national standards on
16 investigations and with -- input into those standards through
17 ANSI and have worked as a professional in this capacity since
18 the late 1980s.

19 **Q.** You said the principles that apply to investigating a
20 sexual harassment complaint, those same principles would apply
21 to a workplace harassment -- a race harassment case; is that
22 right?

23 **A.** Correct. Basically any harassment based on a protected
24 category under state or federal law, it implicates the same
25 laws and the same types of prevention and response apply. And

1 so if somebody complains about racial harassment, religious
2 harassment, whatever it is, they should be both responded to
3 and investigated in the same prompt and thorough manner.

4 **Q.** Who typically hires you or your company?

5 **A.** Well, as an investigator, which is mostly what we do, we
6 are hired by employers. Employees don't have the means or the
7 access to do that. Plus, employers are duty-bound to provide a
8 fair, thorough investigation; and so in doing that, they
9 sometimes hire outside people like me.

10 Usually they have internal people, if they're a large
11 organization especially, but there are often situations where
12 they don't have the resources or it's too high a level or
13 there's a conflict. So we do public agencies, private
14 corporations, non-profits.

15 My -- I was one of the firms that the California
16 legislature used after the Me Too movement.

17 And most of our investigations are kept confidential under
18 the attorney-client privilege, but some have become public, and
19 including some private school investigations and ones against
20 elected officials.

21 **MR. ORGAN:** Your Honor, I would move to have
22 Ms. Oppenheimer testify as an expert.

23 **MS. KENNEDY:** Expert as to what?

24 **MR. ORGAN:** Expert as to workplace investigations and
25 policies and prevention.

1 **MS. KENNEDY:** With respect to Owen Diaz?

2 **MR. ORGAN:** With respect to Tesla.

3 **MS. KENNEDY:** No objection then.

4 **THE COURT:** All right. You may proceed.

5 **BY MR. ORGAN**

6 **Q.** Now, we hired you in this case; is that right? Plaintiff,
7 Owen Diaz did?

8 **A.** True.

9 **Q.** How much are we paying you an hour?

10 **A.** \$600.

11 **Q.** Okay. Do you have any special expertise in race
12 harassment?

13 **A.** Well, I do in that my office has investigated many race
14 cases. And I also have been doing implicit bias training for
15 the State bar, for other attorney and human resource
16 organizations for more than ten years.

17 **Q.** Have you formed an opinion in this case?

18 **A.** Yes.

19 **Q.** What's your opinion?

20 **A.** My opinion is that Tesla did not meet the standard of care
21 in preventing and responding to and investigating multiple
22 complaints of racial harassment that were articulated or
23 brought by Owen Diaz.

24 **Q.** And what do you mean by the standard of care? What is
25 that?

1 **A.** Over the years, the human resource field has developed
2 standards of how a complaint of harassment should be
3 investigated, and those standards are articulated in things
4 like the book that I wrote, handbooks from the law firms, the
5 guidance that was issued by DFEH, which is the Department of
6 Fair Employment and Housing, the task force that I worked with
7 by the EEOC, the Equal Employment Opportunity Commission.

8 So there have been well-articulated standards in this
9 field for more than 20 years as to, you know, what an
10 appropriate response and prevention plan is to workplace
11 harassment based on race and other protected categories.

12 **Q.** Now, we have a demonstrative up here about this. Did you
13 prepare this?

14 **A.** I did.

15 **Q.** Okay. And if you could, go through these eight steps that
16 you identify here as the standard for prevention?

17 **A.** I've got nine. But in any case, who's counting; right?

18 **Q.** Yeah, there are nine. There are eight on my sheet. I
19 apologize.

20 **A.** That's okay. I -- I tinker with these things, so it's
21 hard to know.

22 **Q.** Tell us the nine.

23 **A.** That you have clear policies that are distributed,
24 accessible and then, more importantly, enforced because the
25 enforcement of policies are more important than just having

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1 them. If they're not enforced, they're pretty meaningless.

2 Two, that you train people about them. Both the employees
3 and especially supervisors and managers get additional
4 training. There's a mandatory minimum under state law, but
5 additional training. Especially if there are issues in a
6 specific workplace, it's very helpful and important.

7 Three, giving a consistent message. In this case focusing
8 on racial harassment, that racial harassment will not be
9 tolerated, and then making sure that the work environment is in
10 accord with that. Because, again, saying it is not the same as
11 enforcing it. And so if there are open and obvious things in
12 the work environment, they should be addressed immediately to
13 send a very clear, consistent message.

14 Five is an immediate response. If there is either a
15 complaint or there is notice of harassment, some -- it used to
16 be years ago, I don't think so much employees think that now,
17 that employers would say: Well, I didn't get a complaint, so I
18 didn't have to do anything. But if you see something, if
19 you're aware of it, even an anonymous complaint or the fact
20 that a supervisor hears a racial epithet, that's all things
21 that should be responded to immediately. You don't wait for a
22 complaint and you certainly don't wait for something in writing
23 or official.

24 Six, if there is something offensive, it's removed right
25 away and then the policy is enforced by letting people know.

1 Sending a memo, giving an announcement, having a meeting: This
2 was observed in the workplace. This is inconsistent with our
3 policies. It won't be tolerated. There will be a consequence.
4 And then you, of course, have to follow through on the
5 consequence.

6 And, seven, that there are immediate adequate
7 investigations of complaints or any notice of harassment.

8 Eight, that there is progressive and meaningful
9 discipline. So you might start with something not as
10 significant. Of course, it depends on what the -- what the
11 harassment is. As with anything in employment, it depends on
12 the seriousness, but it should be progressive so that it's more
13 serious if it's repeated.

14 And, lastly, that there's followup; that if somebody
15 complains about an issue, that after an investigation they're
16 told the results. And then there's continued followup to make
17 sure that whatever it was they complained about has stopped and
18 that they can be comfortable continuing to work there.

19 **Q.** Okay. And what is the standard of care relative
20 investigations?

21 **A.** Investigations should be -- and I think I have another
22 slide to help prompt me. And I know -- I don't have control of
23 the slides, is my understanding, so somebody out there, if you
24 do.

25 Thank you.

OPPENHEIMER - DIRECT / ORGAN

1 Oh, okay. I guess I was going to go to something else.

2 Q. Yeah.

3 A. Maybe it's the next one.

4 (Document displayed.)

5 A. Okay. Investigations should be initiated -- and I talked
6 about that -- with any notice.

7 I'm not sure at this point where the slide on the standard
8 for investigations is so I can talk off-the-cuff.

9 Q. Sure.

10 A. Investigations should be prompt, thorough, and fair. When
11 I evaluate an investigation, I look at was the person who did
12 it experienced, not -- didn't have a bias, and appropriate
13 therefore to do that investigation, number one.

14 Number two, was it reasonably thorough? Were the people
15 who should be interviewed interviewed? Were the interviews
16 either done in person or on video? So you can develop some
17 rapport, see that person. Were documents gathered?

18 And then, lastly, did the person who did the investigation
19 come to a reasoned conclusion based on the evidence collected
20 and explain that conclusion so that it's not just arbitrary;
21 that it was consistent with whatever evidence that they
22 gathered?

23 Q. I notice on this slide on Item 4 there's a -- you have
24 something here: Was there appropriate remedial and followup
25 action? What is that referring to?

1 **A.** So that's an after-investigation issue. When I'm
2 evaluating investigations done by other people, I look to the
3 first three prongs for the investigation itself, and then I
4 also look to what happened when it was done.

5 Because there are often problems with retaliation after an
6 investigation. And if there isn't appropriate remedial action
7 and followup, too often there could be retaliation. So it's a
8 very important element in the prevention and response plan.

9 **Q.** And how did Tesla do when you analyzed the things that you
10 saw at Tesla versus the standard of care, as you call it?

11 I think this is Slide 3.

12 (Document displayed.)

13 **A.** Not so well. There are policies, but I did not see
14 evidence that they are routinely and strongly enforced. In
15 fact, there was evidence that the "N" word is used in the
16 workplace, the full word, whether ending in an "E-R" or an "A,"
17 neither of which should be permitted. And that supervisors
18 were aware of it, that action wasn't taken.

19 And so the policies, you know, don't mean much if they are
20 not enforced. In fact, sometimes it -- it undermines and sends
21 the opposite message to have a policy that says one thing and
22 then everybody doing something else.

23 I didn't see evidence that people were trained adequately.
24 A number of the witnesses testified that they didn't have
25 training, both supervisors and employees. And some of the HR

1 people didn't have a lot of training in what to do about racial
2 epithets; how to investigate, how to take action when there
3 wasn't a formal complaint, et cetera.

4 This resulted in not having a consistent message to the
5 workforce about expectations, about racial epithets and
6 harassment.

7 There was evidence, as I said, of epithets in the
8 workplace so the work environment was not being monitored and
9 followed up on about that.

10 In terms of response, some of these responses were -- were
11 relatively quick, but some of them just never happened. And so
12 there was selective investigations and without any clear
13 criteria on why some were and some weren't.

14 There was evidence that there were things in the workplace
15 that were not removed.

16 And then I -- I drilled down more in the investigations
17 and discipline and followup area because at that point I
18 started evaluating the three investigations that were done of
19 Ms. Diaz's complaint.

20 **Q.** Okay. Which slide should we go to next then? Complaint
21 No. 1?

22 **A.** Sure.

23 **Q.** Okay.

24 (Document displayed.)

25 **Q.** So that's on Page 6 -- Slide 6.

1 And tell us what -- tell us what your opinion is relative
2 to the July 31st complaint by Owen Diaz to Tom Kawasaki
3 regarding Judy Timbreza making racist comments, including the
4 "N" word.

5 **A.** Well, there wasn't an experienced investigator assigned to
6 this. Rather, it was done *ad hoc* by somebody whose task was
7 not to do investigations and hadn't been trained, and what
8 happened then was not a thorough investigation. There was no
9 documentation of who was spoken to.

10 Mr. Diaz brought up the fact that there was a history and,
11 yet, that wasn't looked into. No findings were made.

12 And it's really important that anytime you do an
13 investigation, you make a finding. It's like taking something
14 to a jury and the jury says: Well, we don't know. So you just
15 spent however long on a trial, but you're not going to get an
16 answer. The point of an investigation is you need an answer
17 and then you need to do something about it.

18 And then there was no action taken other than I think some
19 people being spoken to about joking, a verbal warning, which
20 wasn't for racial harassment because they never made a finding
21 about that, which they should have. And that tends to
22 trivialize the complaint, and then it makes it harder for
23 people to complain if that's going to be the response that they
24 get.

25 And then I saw no evidence that there was followup.

1 Q. Let's go to Complaint No. 2 in October 2015 and the
2 interaction between Mr. Diaz and Ramon Martinez. What's your
3 opinion as to that investigation?

4 A. Well, similarly there was no investigation. In fact, the
5 emails indicated that at first there was a decision to do an
6 investigation and then they just said: Well, supervisor should
7 just speak to the three people involved: The complainant,
8 respondent, and the witness.

9 And what was particularly troubling here is that Mr. Diaz
10 said that he was fearful. There were threats. So we're
11 talking about a complaint about racial harassment, but also a
12 complaint about potential violence in the workplace.

13 And there was surveillance, apparently, that could have
14 been checked. So there was a -- it's so rare that you get the
15 video and can really find out what happened. So to not check
16 it when you can makes no sense at all. And, again, especially
17 when you have somebody who might be being threatened.

18 There were some informal phone discussions. There were no
19 findings. Again, same issue as last time.

20 And here both of them were given a warning for not getting
21 along, and that is really a disincentive for people to
22 complain. If somebody complains and they get a warning, then
23 they're being blamed instead of the employer doing what might
24 be hard work with sorting it out and making a finding.

25 Q. Let's go to Complaint No. 3, the January 2016 piccaninny

1 incident by Ramon Martinez.

2 (Document displayed.)

3 **Q.** Can you give us your opinion as to that investigation?

4 **A.** Sure. My understanding is that Ms. Delgado, who was the
5 vice-president HR at Chartwell, did that. And she may well be
6 experienced, but as I believe she, herself, admitted, it didn't
7 go the way it was supposed -- the way typical investigations
8 should.

9 It wasn't thorough. It wasn't documented. She did a
10 phone interview with a complainant, Mr. Diaz. She had the
11 respondent answer written questions, which is very poor
12 practice because you can't follow up. You can't listen to how
13 somebody responds and try to gauge the genuineness of that
14 response.

15 There was this -- he said -- Martinez said that Mr. Diaz
16 had accepted his apology. She never went back and confirmed
17 with Mr. Diaz: Did you say to Mr. Martinez, "Oh, it's okay. I
18 understand. It was just you. It's fine"? Which was
19 essentially what Mr. Diaz -- Mr. Martinez said, which, if
20 Mr. Diaz is believed, he did not say and is problematic that
21 Mr. Martinez is lying about this and not being held
22 accountable.

23 The history was not investigated. Mr. Diaz said there's a
24 history with Mr. Martinez. His fears about safety were not
25 investigated. There were no findings made.

1 And both of them then continued to work at the plant.

2 And, again, indicative of even when you have proof of a racist
3 effigy being drawn and a complaint against somebody who there
4 is a history, that they were allowed to continue working there.

5 (Document displayed)

6 **Q.** Do you have any opinions about any other known racial
7 harassment at Tesla from the 2015-2016 time period?

8 **A.** I think I already spoke to the fact that there was
9 evidence that multiple supervisors heard the "N" word used,
10 didn't do anything to investigate, discipline, stop the
11 behavior; that supervisors had been informed of the use of it,
12 and that the general knowledge with -- and the failure to do
13 anything was rather remarkable.

14 **Q.** Okay. And you're talking about Wayne Jackson, Michael
15 Wheeler, and Tom Kawasaki; is that correct?

16 **A.** Correct.

17 **Q.** Those supervisors should have taken action, in your
18 opinion?

19 **A.** Any supervisor who hears a racial epithet should
20 immediately take action.

21 (Document displayed)

22 **Q.** Okay. Do you have any other concerns about prevention of
23 harassment at Tesla?

24 **A.** Well, again, I think I probably mentioned it quickly
25 earlier, but some of the things that stood out is I believe

1 Mr. Quintero was pretty high in the chain of command. Yet, in
2 his deposition said that he was unaware that the policy against
3 harassment applied to contractors.

4 Well, of course at Tesla, as in many organizations, there
5 are a lot of people who were not employees of that -- of Tesla.
6 They're employees of another entity, but they're working at
7 Tesla. But Tesla is responsible for what happens in its
8 workplace, regardless of whether it's an employee doing it, a
9 contractor doing it, or even a client who would come in and do
10 that. They are responsible, and to not understand that is --
11 is a big gap.

12 Mr. Kawasaki said he didn't get training, and training is
13 mandatory for supervisors under California law, and troubling
14 that he is not aware of being trained.

15 In HR Mr. Marconi [sic] said he wasn't trained about the
16 use of the "N" word. And understanding racial epithets is an
17 important part of HR's responsibilities. So I was very
18 surprised that he would not understand the significance of that
19 word and racial epithets in the workplace and how to manage
20 them.

21 And generally the evidence that there have been complaints
22 of the use of the "N" word that were substantiated in the
23 plant. So that would put you on heightened alert to do
24 something about it, to watch for it and to respond.

25 **Q.** And what are your conclusions then?

1 (Document displayed)

2 **A.** That although Tesla may have policies, their employees
3 weren't adequately trained on the policies. The policies were
4 not enforced. They weren't responding to known racial
5 harassment.

6 Investigations were being done *ad hoc*. Not by a trained
7 and experienced person going by a specific protocol, but rather
8 by whoever seemed to be around and know about it without
9 following typical protocol.

10 And then there wasn't a consistent strong disciplinary
11 action to send the message to the workforce or followup to make
12 sure that the conduct wasn't continuing.

13 **Q.** And so if the workforce isn't informed of harassing
14 conduct or that harassing conduct is bad, then it doesn't
15 dissuade others from engaging in similar conduct? Is that part
16 of your conclusions?

17 **MS. KENNEDY:** Objection. Leading.

18 **THE COURT:** Overruled.

19 **THE WITNESS:** Sure. I mean, that if conduct is
20 condoned, it sends a message that it's okay; that it's
21 acceptable and that people can continue to engage in the
22 conduct, and that if you were a target of that conduct or
23 offended by it, there's nothing you can do.

24 I believe at one point somebody was told: You can
25 transfer if you want. Well, the point isn't to have the person

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1 who is offended by racial epithets transfer. The point is to
2 stop it so they can work there. And the organization shouldn't
3 be accommodating that behavior. They should be enforcing their
4 rule against that behavior.

5 Q. Thank you.

6 MR. ORGAN: No more questions, Your Honor.

7 THE COURT: All right.

8 Ms. Kennedy.

9 MS. KENNEDY: Yes. Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. KENNEDY

12 Q. Good afternoon, Ms. Oppenheimer.

13 A. Hello. How are you?

14 Q. Good. How are you?

15 A. I'm well.

16 Q. I understand you have been hired by Mr. Organ as a
17 retained expert in this case; correct?

18 A. Correct.

19 Q. And how much have you charged Mr. Organ for your services
20 thus far?

21 A. Umm, I charge 600 an hour. I would need to add it up.
22 You probably have what it was at deposition. I think at
23 deposition it was about \$4,000, and since then I've done about
24 13 hours.

25 Q. And the presentation, the PowerPoint that you presented,

1 when was that prepared?

2 **A.** A few days ago and then I edited it slightly over the last
3 couple of dates.

4 **Q.** Was it finalized last night?

5 **A.** It was actually finalized a few hours ago based on some
6 evidentiary rulings.

7 **Q.** Prior to a few minutes ago was, it finalized last night?

8 **A.** I believe so.

9 **Q.** Now, I understand that you've been asked to provide an
10 opinion as to the standards of care in the human resources
11 field. Would that be a fair statement?

12 **A.** That I was asked to? Correct.

13 **Q.** And the standards of care that you were referring to refer
14 to, at least in part, to the Department of Fair Employment and
15 Housing guidance; correct?

16 **A.** Correct.

17 **Q.** And the events that you have been asked to opine about
18 occurred in 2015 and 2016; correct?

19 **A.** Yes.

20 **Q.** And the DFEH, the Department of Fair Employment and
21 Housing, guidance was not issued until 2017; correct?

22 **A.** Yes, that's true. I believe I said I co-authored them.

23 **Q.** Correct. But they were not made public. So for Tesla or
24 any other organization, the DFEH guidance that you're referring
25 to in holding Tesla accountable to was not made public until

1 2017, but you're talking about in holding them accountable to
2 the standards of care in 2015 and 2016; correct?

3 **A.** Well, I believe that everything in there was -- was well
4 known and part of the standard of care.

5 What those guidance did was pull it together and make it
6 accessible mainly to smaller employers that -- that don't
7 always have the resources to have that information, but it's
8 consistent with what had been in handbooks since the 1990's.

9 **Q.** I understand. But my question was a little more focused.

10 The standard of care in which you have in your PowerPoint,
11 that is based upon the DFEH guidance that was not issued and
12 made public until 2017; is that correct?

13 **A.** That was one thing, certainly not the only thing. That
14 was --

15 **Q.** And you agree that Tesla does have an Anti-Harassment
16 Policy that in your view is adequate, correct?

17 **A.** I believe so. I looked at it at one point and nothing
18 struck me as being problematic.

19 **Q.** And you also agree that you're not offering an opinion as
20 to the adequacy of any written policy regarding investigations
21 by Tesla; correct?

22 **A.** That's true.

23 **Q.** And you're not offering any opinion as to whether or not
24 there was any type of race-based harassment or retaliation or
25 discrimination; correct?

1 A. That's a jury decision. I -- I wouldn't be -- I would not
2 be the person to offer an opinion on that.

3 Q. And you're not -- and it's correct you are not offering
4 any legal opinions?

5 A. That's true.

6 Q. And you're also not offering any opinions as to any legal
7 standards; correct?

8 A. That's correct.

9 Q. And in this particular case in coming up with your
10 opinions, you only spoke with Mr. Larry Organ, the counsel for
11 Owen Diaz, about this matter; correct?

12 A. I don't -- I'm not sure I understand your question. I'm
13 sorry.

14 Q. Well, let me ask you this: Other than reviewing
15 documentation, which we'll get to in a minute, did you talk to
16 any of the other lawyers for Mr. Diaz about any part of your
17 opinion in this case?

18 A. There have been other people from Larry Organ's office
19 present during one or two discussions.

20 Q. And it's your understanding that Mr. Diaz was a contractor
21 working at the Tesla facility; correct?

22 A. Correct.

23 Q. And it's your -- and it's your testimony, I believe your
24 opinion is that anything and everything that happened at the
25 Tesla factory in Fremont is going to be Tesla's responsibility;

1 correct?

2 **A.** Well, I'm trying to think if "everything and anything"
3 might be an overstatement. But, I mean, I believe that they
4 are responsible for protecting and responding to racial
5 harassment that happens at their plant.

6 So I -- I don't know. I'm sure we could come up with a
7 hypothetical or something that they were not responsible for,
8 but -- so I don't know that I can go quite that broad.

9 **Q.** So as part of your opinion, you have testified that any
10 sort of personnel issues, any claims of any personnel,
11 regardless of whether they're an employee of Tesla, an employee
12 of any contracting staffing agency, Tesla is going to be
13 responsible for anything and everything in that regard; would
14 that be correct?

15 **A.** Well, again, I don't like to say "anything and everything"
16 because it's too -- it's so broad. The point is that they are
17 responsible for harassment that takes place at their plant.

18 **Q.** Okay. Now, as I understand it, some of the standard of
19 care that you've talked about is that an organization needs to
20 have strong policies regarding, I guess, anti-harassment;
21 correct?

22 **A.** Yes.

23 **Q.** And you would agree at least here Tesla has a strong
24 Anti-Harassment Policy; correct?

25 **A.** I recall that it was adequate. How strong it was, I'd

1 need to look at it again. I didn't see that it was a problem.
2 I don't -- I'm not looking for the best policy. I'm looking
3 for an adequate policy.

4 **Q.** So if you're looking for an adequate policy, Tesla had an
5 adequate policy; correct?

6 **A.** Yes.

7 **Q.** And you also believe that as part of the standard of care,
8 workers should receive some type of training regarding
9 anti-harassment, discrimination, retaliation and the like;
10 correct?

11 **A.** Correct.

12 **Q.** And did you look into anything in this matter as to
13 whether or not the staffing agencies were providing any type of
14 harassment training for, say, folks who worked for CitiStaff,
15 as an example?

16 **A.** I know that there was some evidence about it, and I -- but
17 I didn't try to -- I didn't try to determine everything that
18 each of these three organizations provided to who.

19 **Q.** So was it important or part of your retention by Mr. Organ
20 to try to determine if any staffing agency employee -- for
21 example, Mr. Diaz -- had received any type of training from his
22 employer; correct?

23 **MR. ORGAN:** Objection. Argumentative.

24 **THE COURT:** Overruled.

25 **THE WITNESS:** I -- I think that I was mostly focused

1 on the reality of what happened with these complaints. Because
2 I find it's very hard to evaluate training when you're not
3 there and you look at some documents.

4 So sometimes I see evidence that people say: Gee, I
5 didn't get trained, or I did get trained. But trying to
6 evaluate another organization's training is something that
7 is -- it's both difficult to do, and it's difficult to do it
8 based on the type of discovery that's done in a lawsuit. So
9 it's not something I usually try to do as an expert.

10 **BY MS. KENNEDY**

11 **Q.** Well, let me ask you this: In this particular case, were
12 you asked to look into that at all?

13 **A.** I was asked to look into prevention generally, and if I
14 had -- if the documents had made it very clear what training
15 was given to people, I might have been able to do that; but it
16 wasn't clear enough for me to really give an opinion about
17 that.

18 **Q.** And the documents that you reviewed were all provided to
19 you by Mr. Organ; correct?

20 **A.** Well, they were all provided in discovery, so they were
21 both defense and plaintiff documents. I'm looking at the
22 defense documents provided in discovery.

23 **Q.** I understand that, but my question was different. The
24 documents that you had as -- that were provided, were all
25 provided, whether it's in discovery or not, by Mr. Organ's

1 firm; correct?

2 **A.** Sure. I just want to make sure it's clear that most of
3 them come to his firm through the documents that are provided
4 by the different entities.

5 **Q.** And do you know if you got every single piece of discovery
6 information in this case?

7 **A.** I can't say that I got every single piece of discovery,
8 no.

9 **Q.** Well, when you got the discovery documents, when you were
10 looking at the policies, did you ask Mr. Organ to provide you
11 any more training information, say, for CitiStaff, where
12 Mr. Owen Diaz applied to work, the staffing agency, and was
13 placed at Tesla? Did you ask for that information?

14 **A.** I don't recall whether I did or I didn't.

15 **Q.** Would you agree that would probably be important
16 information when you're going to opine about Mr. Diaz's
17 workplace at Tesla, to know whether or not his employer
18 provided any type of harassment training? As part of your
19 opinion, wouldn't that be important, something you would want
20 to know?

21 **A.** Well, I'm not as concerned about whether he got training
22 as I am the supervisors who were on site.

23 **Q.** Okay. Let's go to that.

24 So in looking at -- did you ask for any training materials
25 or do you know if any training materials are available for any

1 of the supervisors at the site?

2 **A.** I -- I don't recall. I think I did look at some training
3 materials, but whether I asked for more and saw everything, I'm
4 just not sure.

5 **Q.** So in talking about the standard of care and training, as
6 you sit here today, you don't know if you had the training
7 materials or if you looked at them or if anybody actually got
8 that training. Would that be accurate?

9 **A.** Well, I wasn't opining on a training program. I was
10 opining on the fact that a number of supervisors indicated they
11 didn't get training and didn't know basic things that I would
12 expect them to know through training. So that's a little
13 different.

14 **Q.** Okay. So based on the information that you were provided
15 through discovery from the defendant Tesla, as well as from the
16 plaintiff, whatever that information was, you don't know, in
17 fact, if even though folks may have said, "Hey, I got
18 training," if they actually got training or not, do you?

19 **A.** That's true.

20 **Q.** You would agree there is no perfect workplace
21 investigation; correct?

22 **A.** That's true.

23 **Q.** And you would agree that the purpose of a workplace
24 investigation is to try to find out what happened, take
25 appropriate steps, as warranted, based on the investigation and

1 allegations, and then, if needed, issue discipline or take
2 other type of remedial action; correct?

3 **A.** Yes.

4 **Q.** And you would agree not every investigation requires a
5 full report; correct?

6 **A.** Well, I guess it depends what you mean by a "full report."
7 Not every investigation requires the same detailed report as
8 another one.

9 **Q.** You would agree, depending on the allegations, depending
10 on what these circumstances are, sometimes an investigation can
11 be conducted very quickly and a result can be made, and it
12 could be an oral report; correct?

13 **A.** I'm not a fan of oral reports. I think that there need to
14 be clear findings.

15 And if there is an oral report, there should be a written
16 documentation of what it was so that the findings can be
17 ascertained and the basis for them.

18 And so sometimes reports are delivered orally, but that
19 doesn't mean there isn't a written documentation of what those
20 findings are.

21 **Q.** Well, you said you're not a fan of an oral report. That
22 doesn't mean that an oral report doesn't meet the standard of
23 care if every other aspect of the investigation is complied
24 with; correct?

25 **A.** I believe it doesn't if there isn't a written

1 documentation showing what the finding was and explaining the
2 basis for it. So even if it's delivered orally, I would expect
3 to meet the standard of care that there be clarity in writing
4 about what those findings are.

5 Q. And could that clarity in writing be a disciplinary action
6 explaining what was done during the investigation, what the
7 conduct was and what the result was?

8 A. Well, I would expect the written documentation to say what
9 the finding was and what the reason was for the finding. So it
10 depends on whether that memo did that or not.

11 Q. Okay. And, now, as I understand from your testimony with
12 respect to Mr. Organ, you reviewed, it looks like, three
13 complaints as part of your presentation.

14 And Complaint No. 1 involves Mr. Judy Timbreza. I think
15 that's your Slide 6. If you want to take a look at it in front
16 of you -- if you have it in front you.

17 A. I don't, but I could probably get it.

18 Q. Okay. Well, it's Complaint No. 1. You referred to it as
19 the July 31st, 2015 complaint to Kawasaki, Re Timbreza.

20 By question is: In that type of -- in that instance, did
21 you understand that the complaint was made and action was
22 taken? And you understand that Mr. Timbreza was never back at
23 the facility anymore; correct?

24 A. Umm, I don't recall. I think I knew that at some point.
25 You're saying it's a fact, and I can't remember every fact, but

1 I don't -- I don't question that you're giving them correctly.

2 **Q.** Ms. Oppenheimer, on your PowerPoint you said that there
3 was inadequate remedial action and no apparent followup.

4 If the facts were true that Mr. Timbreza was counseled,
5 taken away -- taken off the premises and was never seen again,
6 that would be adequate remedial action?

7 **MR. ORGAN:** Objection. Assumes facts not in evidence,
8 Your Honor.

9 **THE COURT:** It's a hypothetical. So you can answer.

10 **THE WITNESS:** Okay. So the hypothetical is if -- if
11 he was taken off the premises and given some sort of verbal
12 warning, was that adequate?

13 **BY MS. KENNEDY**

14 **Q.** No. The question was: If he was followed up, if he was
15 counseled or disciplined and taken off the premises, never came
16 back to Tesla, no more contact with Mr. Diaz or anyone else,
17 that would be adequate remedial action, correct?

18 **A.** Well, I think that one of my issues was that he wasn't
19 counseled or disciplined for the racist comments. And so while
20 the result would have been adequate, I think that there's some
21 meaning behind giving the message that racial epithets are not
22 appropriate.

23 **Q.** Well, if he was taken off the premises and never returned
24 because of, quote, "alleged racial harassment," you would agree
25 that would be adequate; correct?

1 **A.** Well, if that is the reason and he was told that was the
2 reason as opposed to another reason.

3 **Q.** Right. But you don't have any idea one way or the other;
4 correct?

5 **A.** I don't -- I don't recall. I thought that I did recall
6 that he was not warned about using a racial epithet, that he
7 was warned about joke.

8 **Q.** Yes. And there's an email about that. But do you know if
9 there's any other action that was taken that was not in the
10 email?

11 **MR. ORGAN:** Objection. Vague and ambiguous,
12 Your Honor.

13 **THE COURT:** Overruled. You can answer, if you can.

14 **THE WITNESS:** I don't recall.

15 **BY MS. KENNEDY**

16 **Q.** And do you know if Mr. Owen Diaz was satisfied with how
17 that complaint was handled and the fact that there was no more
18 contact with Judy Timbreza? Do you know that one way or the
19 other?

20 **A.** I don't. And I don't necessarily consider that relevant
21 if it wasn't adequate.

22 **Q.** So anything -- in your opinion, anything -- if he is
23 terminated, if Judy Timbreza is terminated, in your opinion
24 that still is not adequate; correct?

25 **A.** If he had been terminated for making racist comments,

1 then, yes, I think that that is adequate remedial action. It
2 was not my understanding that that's what happened.

3 Q. Let's go to Complaint No. 2. This is the October 2015
4 complaint to Ed Romero regarding Ramon Martinez and the alleged
5 threats in an elevator.

6 Ms. Oppenheimer, is it your understanding that only
7 Mr. Diaz complained about this incident?

8 A. No. My understanding is that both Mr. Martinez and
9 Mr. Diaz complained about each other.

10 Q. And do you believe that in this particular case
11 Mr. Martinez's complaint should have been investigated as to
12 Mr. Diaz?

13 A. Yes.

14 Q. And you believe that Mr. --

15 A. I'm sorry. Well, I think that when you -- when you
16 investigate -- well, look -- I'm sorry. I thought you said it
17 the opposite way around.

18 I think Mr. Martinez was complaining about something that
19 wasn't racial harassment or even harassment. It was sort about
20 rudeness.

21 I think, though, that it would be impossible to
22 investigate either complaint without looking at both. And so,
23 you know, it's -- it's going to be part and parcel.

24 Q. So you'd agree that at least as to Complaint No. 2, an
25 investigation should have been done to look at what occurred

1 from both sides based upon what Mr. Romero and -- sorry,
2 Mr. Diaz and Mr. Martinez were complaining about; correct?

3 **A.** Correct.

4 **Q.** And is it your understanding that this was at least looked
5 into, but your position is that it wasn't done in a way that
6 you thought was appropriate under your determination of a
7 standard of care; correct?

8 **A.** Well, I believe there was even witness testimony from
9 somebody in HR that it wasn't, you know, appropriate from -- or
10 maybe that was the next one.

11 **Q.** Yeah, I think that's the wrong one?

12 **A.** I'm sorry. I might be conflating them.

13 Okay. But, yes, I don't believe it was sufficient. There
14 were no findings. Mr. Diaz said that there has been history
15 that wasn't looked at. There was surveillance that wasn't
16 looked at. So I don't see how that could meet a standard of
17 thoroughness.

18 **Q.** Well, as to the surveillance, do you know if the
19 surveillance was actually available? Do you have any idea?

20 **A.** My understanding was that Mr. Diaz thought it was, but
21 obviously I -- I don't know. It has to be researched.
22 Sometimes people think it is and it isn't.

23 **Q.** Do you know if anyone from Tesla -- any employee from
24 Tesla was charged with investigating that Complaint No. 2?

25 **A.** I don't recall right now.

1 Q. Okay. Let's go to the last complaint, Complaint No. 3,
2 the January 21st, 2016 -- I'm sorry, the January 22nd, 2016,
3 complaint to Ed Romero about the drawing and, as Mr. Diaz
4 characterized it, as the, quote, "racist effigy."

5 And one of your criticisms is that there was no access to
6 an experienced investigator; is that correct?

7 A. Well, I think I said I'm really not sure how much
8 experience Ms. Delgado had. I said it's difficult to assess in
9 that case, but that even she said it wasn't done according as
10 to appropriate standards.

11 Q. Well, you also say there were no findings. Do you know if
12 that's true or false?

13 A. I didn't see written findings.

14 Q. Well, did Mr. Organ provide you an email that Ms. Delgado
15 sent regarding, quote, "the witness statements and findings"?

16 A. There were some emails. I mean, there was -- there was no
17 question that he -- that Mr. Martinez made that racial effigy
18 because he admitted it.

19 And so when I say "findings," I'm looking for what about,
20 you know, the history that was brought up, what about the fears
21 of potential violence and retaliation that are brought up?

22 You really didn't have to make a, quote/unquote, "finding"
23 on something that's admitted, although there's certainly
24 nothing wrong with that. But I was looking for a bit more than
25 that in a situation where somebody says: There's a history and

1 I'm frightened of this person.

2 **Q.** Ms. Oppenheimer, did Mr. Organ provide you an email from
3 Jackelin Delgado dated January 25th, 2016?

4 **A.** I can look through. I mean, there were a number of emails
5 from late January on that complaint. You want the one from
6 Delgado from January 25th?

7 **Q.** Yes, ma'am. It's an email January 25th, 2016.

8 **A.** Here is a bunch on the same date from different people.
9 There's one from Wayne Jackson of that day. There's one from
10 Deleon from that day. Here is one from Quintero that day.

11 Okay. I'm sorry. I'm looking for the one from...

12 (Brief pause.)

13 **A.** Tell me again who -- who's on the 25th? Because there are
14 so many of them I've got.

15 **Q.** Her name is Jackelin Delgado from Chartwell.

16 **A.** Okay. I've got -- yes. It's just further down in the
17 email chain.

18 **Q.** Okay. So looking at that, do you find that that email,
19 which talks about her findings and the interviews and the fact
20 that Mr. Martinez admitted to the drawing in his statement, in
21 your opinion, that's still insufficient; correct?

22 **MR. ORGAN:** Objection. Vague and ambiguous.

23 **THE COURT:** Overruled. You can answer.

24 **THE WITNESS:** You're talking about the one from 11:07?
25

1 **BY MS. KENNEDY**

2 **Q.** The email dated January 25th, 2016.

3 **A.** Yeah. Is it the one that was sent at 11:07?

4 **Q.** In the morning? Yes, ma'am.

5 **A.** Okay. I see (as read):

6 "Attached are the statements. I've reached out to
7 the manager for permission to interview. Will be sure to
8 place him on a corrective action. Do they work in
9 separate departments? He's concerned for his safety.
10 Will this be a reasonable recommendation for them to work
11 apart?"

12 I don't see -- I don't see a finding in here.

13 **Q.** Ms. Oppenheimer, do you agree that employers are not the
14 guarantors of a harassment-free workplace?

15 **A.** Yes.

16 **Q.** And do you also agree that an investigation, no matter how
17 properly conducted, cannot always uncover the truth?

18 **A.** Yes.

19 **Q.** And do you also agree that if an organization has all of
20 the proper policies, all of the proper training, all the proper
21 followup, have policies that are compliant with state and
22 federal law, they discipline appropriately, you can still have
23 harassment in the workplace; correct?

24 **A.** Yes.

25 **MS. KENNEDY:** Your Honor, I have no more questions.

1 **THE COURT:** All right. Any redirect?

2 **MR. ORGAN:** Just a couple questions.

3 **REDIRECT EXAMINATION**

4 **BY MR. ORGAN**

5 **Q.** Are good and bad employees entitled to a harassment-free
6 workplace?

7 **A.** Sure.

8 **Q.** So their performance, how they perform, doesn't change the
9 standards that an employer has to apply to them; is that
10 correct?

11 **MS. KENNEDY:** Objection. Beyond the scope.

12 **THE COURT:** Sustained.

13 **BY MR. ORGAN:**

14 **Q.** Is remedial action sufficient if the conduct continues?

15 **A.** No.

16 **Q.** Thank you.

17 **MR. ORGAN:** No more questions, Your Honor.

18 **THE COURT:** All right.

19 **MS. KENNEDY:** No more questions, Your Honor.

20 **THE COURT:** All right. Thank you, Ms. Oppenheimer.

21 **THE WITNESS:** Okay. Thank you.

22 (Witness excused.)

23 **THE COURT:** Who Is the next witness?

24 **MR. ORGAN:** Mr. Mahla, Your Honor.

25 **THE COURT:** Okay.

1 (Brief pause.)

2 **THE COURT:** Did somebody go get the witness?

3 **MR. ALEXANDER:** He's testifying via Zoom. Ms. Davis
4 is accessing that now.

5 **THE CLERK:** Okay.

6 **THE COURT:** Ladies and gentlemen, you're always free
7 to stand up if you need to or want to. I've been told at
8 different times that it's a good idea to stand up just for
9 stuff, circulation and things. You're free to remain sitting,
10 whatever you want to do.

11 (Brief pause.)

12 **THE CLERK:** All right. Good afternoon, Mr. Mahla.
13 Can you hear us?

14 (No response.)

15 **MR. ORGAN:** I'm not sure he can hear.
16 Dr. Mahla, can you hear?

17 **THE COURT:** You may be muted, Jean.

18 **THE CLERK:** I am, but I'm supposed to be. Let me make
19 sure the sound system isn't...

20 Mr. Mahla, are you able to hear us?

21 **THE WITNESS:** I am.

22 **THE CLERK:** Okay. Great.

23 Do you want me to go ahead and swear him in?

24 **THE COURT:** Yes.
25

MAHLA - DIRECT / ORGAN

CHARLES MAHLA,

called as a witness for the Plaintiff, having been duly sworn,
testified as follows via Zoom:

THE WITNESS: I do.

THE CLERK: Thank you, sir.

THE COURT: Please proceed.

DIRECT EXAMINATION

BY MR. ORGAN

Q. Good afternoon, Dr. Mahla. How are you?

A. I'm fine. How are you, sir?

Q. Great. Thank you for joining us.

Could you please talk about your educational background?

A. I have an undergraduate degree, a Bachelor of Arts in
economics from Lafayette College. I have a PhD in economics
from the University of North Carolina Chapel Hill, in Chapel
Hill, North Carolina.

Q. And in terms of providing opinions on economic issues, why
don't you tell us what your experience is for that?

A. Well, it runds the gamut. I've done work in antitrust,
meaning looking at the competitive nature of markets.

I have done work in the intellectual property area of
valuing patents, trademarks, trade secrets, things that nature.

I do work in general damage analysis, lost profits for
firms in litigation involving two companies.

And I do medical malpractice and injury work, as well as

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1 work in the employment arena. And I've been doing -- I've been
2 doing this work dating back to 1994.

3 **Q.** Have you ever testified in court?

4 **A.** Many times, yes.

5 **Q.** And have you ever given expert opinion on valuation of
6 companies?

7 **A.** I have done on a number of occasions assignments similar
8 to the one here.

9 **MR. ORGAN:** Your Honor, I move that Dr. Mahla be
10 qualified as an expert.

11 **THE COURT:** Okay. On what topic?

12 **MR. ORGAN:** On the issue of the economic value of
13 Tesla, Inc.

14 **MS. KENNEDY:** As of what time period?

15 **MR. ORGAN:** Financial condition of Tesla, Inc.

16 **THE COURT:** As of what time period?

17 **MR. ORGAN:** As of the date of his deposition,
18 Your Honor.

19 **THE COURT:** Okay. Which was in?

20 **MR. ORGAN:** 2019, Your Honor.

21 **THE WITNESS:** February of 2020.

22 **MR. ORGAN:** Oh, February of 2020, Your Honor.

23 **MS. KENNEDY:** No objection.

24 **THE COURT:** Okay. You may proceed.

25 **MR. ORGAN:** Thank you, Your Honor.

1 BY MR. ORGAN

2 Q. So what did you do to come up with a value of Tesla, Inc.,
3 as of February 2020?

4 A. Well, the value of Tesla is -- Tesla is a publicly-traded
5 firm. So the value of Tesla is relatively easy to determine.
6 It's simply -- and it's sometimes referred to as the market
7 capitalization.

8 The market cap of Tesla at the time of my deposition is
9 simply determined by taking the publicly-traded shares
10 outstanding and multiplying it by the share price of those
11 shares. And as of the day before my deposition, the estimate
12 of Tesla's market value was \$151.2 billion.

13 Q. \$151.2 billion; is that correct?

14 A. Correct.

15 Q. Okay. And in terms of the financial condition of Tesla,
16 in addition to its market capitalization of \$151.2 billion, did
17 you analyze anything else in terms of the financial condition
18 of Tesla as of February 2020?

19 A. Sure. Well, generally, in looking at a firm like Tesla,
20 you look at things like revenue and revenue growth. You look
21 at its asset base. You can look at the amount of cash and cash
22 equivalents that it has, that it records on its balance sheets.
23 Cash equivalents are essentially investment vehicles that can
24 be converted very quickly into cash. So they're considered
25 cash and cash equivalents. We look at things like that.

1 We look at the amount of free cash flow. That's a measure
2 of a firm's ability to generate cash. Free cash flow is simply
3 the cash generated from operations minus any capital
4 expenditures that the firm has; investments, longer-term
5 investments. You can look at things like the total amount of
6 cash above and beyond those -- those investments.

7 And, finally, you can look at the firm's ability to
8 generate income, net income; just total revenue minus total
9 costs.

10 Q. I believe during your deposition you had a chart.
11 Exhibit 6 I think it was; is that correct?

12 A. Yes.

13 MR. ORGAN: And, Your Honor, we have that chart for
14 the jury.

15 THE COURT: All right.

16 (Document displayed.)

17 BY MR. ORGAN:

18 Q. Do you recognize this document, Dr. Mahla?

19 A. I do. This is marked as Exhibit 6 to my depo.

20 Q. Okay. So tell us, go through this, if you could, so that
21 we can understand this for those of us who are not math whizzes
22 like yourself. Tell us what this means.

23 A. Sure. Well, there's two columns, one as of June 30th,
24 2019, and those are most of the financials that I used at the
25 time I was writing my initial report back in October. That was

1 the last set of financials that were produced by Tesla in a
2 public forum to the SEC and also through its own publication of
3 financial information on its website.

4 The second column 12/31/2019, that's the last financial
5 reporting period that I had available prior to my deposition.
6 And so I looked at the change from the time I had done my
7 initial report until the time I was deposed.

8 And we start with total assets. In June of 2019, Tesla
9 recorded \$31.9 billion in assets. They increased a little over
10 7 and a half percent in that interim period, the final six
11 months of 2019, to \$34.3 billion.

12 Total revenues, and here we're looking at calendar years
13 2018 and 2019. It generated \$21.5 billion in revenues in 2018.
14 Revenues were up 14 and a half percent in '19 to 24.6 billion,
15 which is the 24th -- it's listed there as 24,578. That's in
16 thousands -- or that's millions rather. So that's
17 \$24.6 billion.

18 We spoke about the market capitalization. At the time of
19 my report, I had looked at the number of shares outstanding and
20 the closing price of Tesla on the -- on a couple of days before
21 I filed my report on October -- on October. I looked at the
22 price on October 9th. That gave a market capitalization or a
23 market value of 43.8 billion.

24 You can see that the market had re-evaluated Tesla and, in
25 fact, on the day before my deposition the market had more than

1 tripled its assessment of Tesla value and it listed at
2 \$151.2 billion.

3 Cash and cash equivalents, the next is "C" and "CE."
4 That's the cash that we spoke of. And in June they reported
5 \$5 billion in cash on their books. By the end of the year,
6 that had increased by almost 1.3 billion to 6.268 billion.

7 Tesla reported free cash flow as 614 million in the second
8 quarter of 2019. In the fourth quarter it reported free cash
9 flow of over a billion dollars, and that's just the operating
10 cash flow above expenses less capital expenditures.

11 And finally the net income. At the time I wrote my
12 report, the second quarter earnings were reported as negative
13 408 million. In fact, Tesla had not made -- they maybe had one
14 quarter or two quarters prior to that where they made a
15 positive net income. Generally up through 2019 Tesla was not
16 positive. It was not in the black in terms of net income. The
17 last two quarters of 2019 Tesla reported 143 million in
18 positive profits in the third quarter and 105 million in
19 positive profits in the fourth quarter.

20 **MR. ORGAN:** Okay. No more questions, Your Honor.

21 **THE COURT:** All right. Ms. Kennedy.

22 **MS. KENNEDY:** Yes, Your Honor. A few questions.

23 **CROSS-EXAMINATION**

24 **BY MS. KENNEDY**

25 **Q.** Good afternoon, Mr. Mahla.

1 A. Good afternoon.

2 Q. I understand you've been retained to render an opinion
3 regarding the financial condition of Tesla; correct?

4 A. Yes.

5 Q. And basically the financial condition is basically the
6 financial stats of the organization; right?

7 A. Correct.

8 Q. You take a look at the asset base and the cash generation
9 profitability; correct?

10 A. Yes.

11 Q. When you look at asset base, that includes every nut and
12 bolt, so to speak, that Tesla owns, everything from desks to
13 chairs to laptops to all of that; correct?

14 A. Sure.

15 Q. And as I understand what you did, you basically just
16 looked at the publicly-traded financial -- publicly available
17 information regarding financial stats; correct?

18 A. Yes. It's a publicly-traded firm, that's right.

19 Q. And then just recited what those stats were; correct?

20 A. That's right.

21 Q. And when you talk about net revenue, that does -- strike
22 that.

23 When we talk about revenue, that doesn't include expenses;
24 correct?

25 A. No. That's purely revenue.

1 Q. And when you're looking at the financial condition of an
2 organization, you need to look at more than just one or two
3 financial statements; correct?

4 A. Sure.

5 Q. And you would agree Tesla would be described, in using
6 your words, as "a relatively young, fast-growth company that
7 could face risk to its business"? Do you agree with that?

8 A. Sure. That was in my report.

9 Q. Right. And some of those risks could result in financial
10 distress to Tesla. You agree with that; right?

11 A. At the time I wrote that, that was certainly a risk, yes.

12 Q. And that's despite the very large asset base that Tesla
13 has; right?

14 A. Sure. And its -- and its large market capitalization,
15 that's true.

16 Q. So other than simply looking at the financial -- the
17 publicly available financial statements, you didn't do anything
18 else to determine any type of financial condition of the
19 organization; correct?

20 A. Well, the only information that was available to me was
21 publicly available information, and this is information that
22 Tesla files with the Securities and Exchange Commission. So
23 this is -- these are -- these figures are filed under penalty
24 of perjury, so I assume they are correct.

25 Q. Correct. But my question is: So you looked at these

1 filings with the SEC and basically you recited what is on those
2 SEC filings as part of your opinion; correct?

3 **A.** Correct.

4 **MS. KENNEDY:** Your Honor, I have no -- strike that.
5 Did you use -- strike that.

6 Thank you. I'm done. Thank you, Your Honor.

7 **THE COURT:** Okay.

8 Mr. Organ, anything further?

9 **MR. ORGAN:** No more questions, Your Honor.

10 **THE COURT:** All right. Thank you, Mr. Mahla. You're
11 excuse.

12 **THE WITNESS:** Thank you.

13 (Witness excused.)

14 **THE COURT:** And who is next?

15 **MR. ORGAN:** Your Honor, we would move to put in
16 Exhibit 6, the Anti-Handbook Handbook.

17 **THE COURT:** All right. Is there --

18 **MR. ORGAN:** There's an agreement.

19 **MS. KENNEDY:** Yes, we stipulated to Exhibit 6.

20 **THE COURT:** All right. So Exhibit 6 is admitted.

21 (Trial Exhibit 6 received in evidence)

22 **MR. ORGAN:** And then Exhibit 3, Your Honor, is now
23 agreed upon in its edited form.

24 **MS. KENNEDY:** Exhibit 3 in the redacted form per the
25 agreement, as well as Exhibit 379, the Demetric Di-az

1 application.

2 **MR. ORGAN:** Well, that would come in during their
3 case, Your Honor.

4 **THE COURT:** Well, it doesn't really make any
5 difference. They're both admitted.

6 **MR. ORGAN:** Great. Thank you, Your Honor.
7 (Trial Exhibits 3 and 379 received in evidence)

8 **MR. ORGAN:** Great.
9 And then we have some discovery to read.

10 **THE COURT:** Okay. So let's get to that.

11 So, ladies and gentlemen, there's going to be a little bit
12 of the written discovery that the parties exchanged during the
13 course of the litigation that's now going to be read to you.
14 So there are going to be two different types.

15 One is interrogatories. So evidence that is presented in
16 the form of answers to one of the parties -- to written
17 interrogatories which were submitted by the other side. These
18 answers were given in writing and under oath before the trial
19 in response to questions that were submitted under established
20 court procedures. You should consider the answers, insofar as
21 possible, in the same way as if they were made from the witness
22 stand.

23 And in addition to that, you're going to -- the plaintiffs
24 are going to read a few admissions, and evidence will now be
25 presented to you in the form of admissions to the truth of

1 certain facts. Those admissions were given in writing before
2 the trial in response to requests that were submitted under
3 established court procedures. You must treat these facts as
4 having been proved.

5 All right. Mr. Alexander.

6 **MR. ALEXANDER:** Thank you, Your Honor.

7 Reading Interrogatory No. 2, question (as read):

8 "Identify the business relationship between you
9 and CitiStaff Solutions, Inc."

10 **THE COURT:** I think we should state that these were
11 special interrogatories that were sent to defendant Tesla, Inc.

12 All right. Go ahead.

13 **MR. ALEXANDER:** Thank you, Your Honor.

14 Response (as read):

15 "Defendant contracts with nextSource to staff
16 temporary employees at its facilities. It is
17 defendant's understanding that nextSource contracts
18 with CitiStaff Solutions, Inc., among other third
19 parties, to secure temporary employees to work at its
20 facilities. Discovery is ongoing and defendant
21 reserves the right to supplement its response."

22 Interrogatory No. 3 (as read):

23 "Identify the business relationship between you
24 and nextSource.

25 "Defendant contracts with nextSource to staff

1 temporary employees at its facilities. It is
2 defendant's understanding that nextSource contracts
3 with CitiStaff Solutions, Inc., among other third
4 parties, to secure temporary employees to work at its
5 facilities. Discovery is ongoing and defendant
6 reserves the right to supplement its response."

7 Interrogatory No. 8 (as read):

8 "Please provide the last best-known contact
9 information for Ed Romero. (In responding to this
10 interrogatory, the term 'contact information'
11 includes, but is not limited to, address, phone number
12 and email.)

13 Response (as read):

14 "Mr. Romero is a former Tesla employee, but he is
15 represented by counsel for Tesla in this action."

16 Interrogatory No. 17 (as read):

17 "Please describe in comprehensive detail each
18 position Victor Quintero has held during his
19 employment at the Tesla factory from 2014 to the
20 present. (For the purpose of responding to this
21 interrogatory, the term 'describe' -- within quotes --
22 "means to list for each position the job title, job
23 duties, hours worked, and the dates the position was
24 held.)

25 Response (as read):

1 "Victor Quintero's position is manager recycling
2 services from May 12, 2015, through the date of this
3 response."

4 Interrogatory No. 18 (as read):

5 "Please describe in comprehensive detail each
6 position Ramon Martinez held during his employment at
7 the Tesla factory. (For the purposes of responding to
8 this interrogatory, the term 'described' -- within
9 quotes -- "means to list for each position the job
10 title, job duties, hours worked, and dates the
11 position was held.)

12 Response (as read):

13 "Ramon Martinez was not employed by Tesla during
14 the time that plaintiff Owen Diaz or plaintiff
15 Demetric Di-az worked at Tesla. Ramon Martinez's
16 position from January 14, 2019, to the date of this
17 response is lead material handler."

18 Interrogatory No. 22 (as read):

19 "Please identify the individuals and/or companies
20 that were responsible for painting over graffiti or
21 drawings or handwriting in the bathrooms at the Tesla
22 factory from January 1, 2014, to January 1, 2017.

23 Response (as read):

24 "During the time plaintiff worked at Tesla,
25 Tesla's facilities department and facilities contract

1 supervisor, including, but not limited to, Andres
2 Donet, was 'responsible' for cleaning and maintaining
3 the bathrooms at Tesla's Fremont, California,
4 facility."

5 And now I will read the request for admissions.

6 Request No. 2 --

7 **THE COURT:** And, again, these were Request For
8 Admissions to defendant Tesla.

9 **MR. ALEXANDER:** Thank you.

10 Request No. 2 (as read):

11 "Admit plaintiff Owen Diaz was working at the
12 Tesla factory pursuant to the contract you had with
13 defendant CitiStaff, Inc.

14 Response (as read):

15 "Defendant admits that it contracts with
16 nextSource to staff temporary workers at its
17 facilities. It is defendant's understanding that
18 nextSource contracts with CitiStaff Solutions, Inc.,
19 among other third parties, to secure temporary workers
20 to work at its facilities."

21 Request for Admission No. 10 (as read):

22 "Admit you had no security recordings or footage
23 of any interactions between plaintiff Owen Diaz and
24 Ramon Martinez."

25 Response (as read):

1 "Admit."

2 And then the final is information pursuant to General
3 Order number 71 (as read):

4 "Request Demetric Di-az and Owen Diaz's supervisors."

5 The response (as read):

6 "During their temporary assignments to Tesla,
7 Demetric Di-az and Owen Diaz were supervised by Javier
8 Caballero as to Demetric Di-az, Ed Romero as to Owen
9 Diaz."

10 **THE COURT:** All right. Thank you.

11 **MR. ORGAN:** Your Honor, at this point in time we have
12 one more witness, Ms. Heisen, but we have not received the
13 responses from the defendant as to the designations we made.

14 **THE COURT:** Okay.

15 **MR. ORGAN:** And so --

16 **THE COURT:** All right. So you would like to suspend
17 for the rest of the day?

18 **MR. ORGAN:** Would that be possible, Your Honor?

19 **THE COURT:** Yes. Yeah.

20 **MR. ORGAN:** Okay. Thank you, Your Honor.

21 **THE COURT:** All right. So, ladies and gentlemen, this
22 case is moving right along as I had hoped. There is still more
23 to come.

24 So come back tomorrow as you came today and the day before
25 and the day before. I really appreciate your promptness, and I

1 will look forward to seeing you in the morning.

2 Yes.

3 **JUROR:** Do you have any anticipation when -- I mean,
4 is Monday still the target?

5 **THE COURT:** Monday is -- as best I can tell, the case
6 will go to the jury on Monday.

7 And so let me just -- and that will include closing
8 statements. There may be a little more evidence, I don't know.
9 We'll see how things go tomorrow, but I'm pretty sure it's
10 going to happen on Monday.

11 And then it's going to be up to you to decide the timing
12 on how you deliberate. So you wouldn't -- you're not -- you
13 don't have to be -- leave at 1:30. You can choose when you
14 arrive and when you go. I would hope that you would continue
15 at least to arrive at the same times that you have and how long
16 you stay will be up to you.

17 But, yes, I do think that everything will be to the jury
18 on Monday.

19 **JUROR:** Thank you.

20 **THE COURT:** All right. Thank you all.

21 (Jury exits the courtroom at 1:11 p.m.)

22 (Proceedings were heard out of presence of the jury:)

23 **THE COURT:** Okay. Please be seated, everybody.

24 So you heard what I think. I don't know whether that's --
25 whether I'm right as far as the timing is concerned. If I am

1 wrong in any by your estimates, let me know so that I can tell
2 the jury; but I think that's what it seems like to me.

3 And then we'll see whether -- the evidence -- Ms. Kennedy,
4 I'll look to you. Do you think your case will be in by 1:30
5 tomorrow?

6 **MS. KENNEDY:** Oh, yes. Absolutely. Your Honor, we
7 are going to have Ramon Martinez -- I'm sorry -- Joyce
8 DelaGrande and then Ramon Martinez. And that will be it.

9 **THE COURT:** Okay. All right. Then we're going to be
10 in good shape.

11 **MR. ORGAN:** My understanding is you want to have Joyce
12 testify at 8:30, and then we would play the video, and then
13 Mr. Martinez; is that right?

14 **MS. KENNEDY:** The video?

15 **MR. ORGAN:** I'm sorry?

16 **THE COURT:** Ms. Heisen.

17 **MS. KENNEDY:** Oh, I see. Oh, sure. If you want to do
18 that, that's fine. Ms. DelaGrande has to catch a flight.

19 **MR. ORGAN:** All right.

20 **MS. KENNEDY:** Yes. That's perfectly fine.

21 **THE COURT:** Okay.

22 **MR. ORGAN:** I guess that's it, Your Honor.

23 **THE COURT:** I guess the issue is when am I going to
24 get the objections or counter designations or whatever is left
25 for Ms. Heisen so that I can --

1 **MS. KENNEDY:** Oh, you'll have them this afternoon.

2 **THE COURT:** Okay. Sooner rather than later --

3 **MS. KENNEDY:** Yes.

4 **THE COURT:** -- because you'll want to know what my
5 rulings are.

6 **MR. ORGAN:** Well, we will be having a conference still
7 tomorrow?

8 **THE COURT:** Yes.

9 **MR. ORGAN:** So we will be doing closings on Monday?

10 **THE COURT:** Correct. And we will do the Final Jury
11 Instructions right after the evidence is finished on Friday.

12 **MR. ORGAN:** I think you got my comments at least last
13 night I believe.

14 **THE COURT:** On the Jury Instructions, yes.

15 **MR. ORGAN:** Yes, Your Honor.

16 Okay. And then we also -- we might have a little bit of
17 rebuttal, but it will be maybe ten minutes at the most.

18 **THE COURT:** Okay. Well, we'll see where we are.

19 **MR. ORGAN:** Yes.

20 **THE COURT:** Okay.

21 **MR. ORGAN:** Thank you, Your Honor.

22 **MS. KENNEDY:** Thank you, Your Honor.

23 (Whereupon at 1:13 p.m.further proceedings
24 were adjourned until Friday, October 1, 2021
25 at 8:00 a.m.)

I N D E X

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I N D E XE X H I B I T S

<u>TRIAL EXHIBITS</u>	<u>IDEN</u>	<u>EVID</u>	<u>VOL.</u>
3		689	4
6		688	4
204	557	558	4
265		564	4
379		689	4

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Thursday, September 30, 2021

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